



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

In this dispute, the landlord sought compensation from the tenants pursuant to section 67 of the *Residential Tenancy Act* (the “Act”), including retaining the security deposit, and recovery of the filing fee pursuant to section 72 of the Act.

The landlord applied for dispute resolution on July 12, 2019 and a dispute resolution hearing was held on Monday, October 21, 2019. The landlord’s agent attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenants did not attend.

Regarding the service of the Notice of Dispute Resolution Proceeding package (the “package”), the landlord’s agent (the “agent”) testified that they served the package by way of Canada Post Xpresspost on July 12, 2019. Two tracking numbers, one for each package, was provided into evidence. Canada Post’s online “Track a package” website indicated that the packages were delivered on July 16, 2019 and that notice cards were left. The tenants were still, by all accounts and I find on the evidence, still residing in the rental unit at this time. The tenants failed to claim their mail, and the packages were returned to the sender on August 14, 2019.

Given the above, I find that the landlord served the tenants with the package in compliance with sections 59(3) and 89(1)(c) of the Act. Failure by the tenants to pick up the notices does not nullify service under the Act or the *Rules of Procedure*.

Finally, I note that I have reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the landlord entitled to compensation under section 67 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

This is a claim by the landlord against their former tenants who, the landlord alleges, breached strata bylaws, and thus the tenancy agreement, by illegally renting out the rental unit as an Airbnb accommodation, thus incurring over \$30,000 in fines. In addition, the landlord seeks compensation from the tenants for, by illegally renting out the rental unit, indirectly causing property damage to the building. The landlord applies to retain the security deposit in partial satisfaction of any compensation awarded.

Submitted a few weeks before the hearing was an additional claim in the amount of \$1,102.04, related to property damage at the end of the tenancy. However, the agent admitted that no condition inspection reports had been submitted into evidence, and that the landlord did not follow the Act in respect of move-out inspection requirements. The agent stated that they wished not to pursue the additional claim at present. As such, I will not consider this additional claim further; this aspect of the landlord's claim is dismissed without leave to reapply.

The parties signed a written tenancy agreement for a tenancy that started June 1, 2016, and which ended near or at the end of July 2019. Monthly rent was \$2,500.00 and the tenants paid a security deposit of \$1,445.00 (consisting of a security deposit of \$1,380.00 and a key fob deposit of \$65.00). A copy of the written tenancy agreement was submitted into evidence.

The tenancy agreement included an addendum which state that "Sublease is not allowed unless the landlord and tenant agreed and documented on another written agreement." The addendum also states that "If tenant violates any bylaws or rules of the strata (BCS 3053) during the tenancy period, the tenant is obligated to pay the fines and take corrective actions required by the council." The addendum is signed by the landlord and one of the tenants.

Also submitted into evidence is a Form K, which was signed by one of the tenants. While the agent was unable to provide any certainty around whether the tenants had actually received a copy of the strata rules and bylaws, he argued that the tenant's signature on the Form K and an on the tenancy agreement addendum proves that the

tenants were, or would have been, aware of the rules regarding unlawful subleasing. The strata bylaws impose a \$1,000 per day fine on any tenant of the building illegally subleasing or subletting their unit.

The tenants proceeded to, according to the agent's submissions and documentary evidence, rent out the rental unit as an Airbnb accommodation for 31 nights between April 6 and May 23, 2019. Rentals consisted of a series of mostly 1- and 2-day rentals, and some lengthier rentals of 9- and 10-day durations.

Numerous letters between the strata council and the landlord, and then between the landlord and the tenants, were submitted into evidence. The letters reference detailed and specific information about the ongoing violations of the bylaw, and strata's expectations that the bylaw infractions cease. The strata bylaws state that

A strata lot must not be used for short-term accommodation purposes, such as a bed-and-breakfast, lodging house, hotel, home exchange, temporary housing, corporate housing, time share or vacation rental. Without limiting the generality of this bylaw, an owner, tenant or occupant must not enter into a license for the use of all or part of a strata lot.

The bylaws also state that where an owner leases the strata lot (such as a rental unit as is the case here) the strata corporation "shall levy against the owner a fine of \$1,000.00 per day during the period of the rental."

The letters include, in some cases, photographs of the Airbnb guests coming and going, and all letters reference reports made to the strata about non-tenant guests coming and going. Communication between the landlord and the tenants confirm the tenants' awareness of the bylaw infractions. Warning letters were sent to the tenants.

One email dated June 29, 2019 from the landlord to the tenant reads as follows:

[Tenant], Your illegal short term rental is a violation of strata rules and has resulted in a total of \$43,000 fines on the unit. (see infraction letters attached). Your rental [*sic*] activity is without my permission. I have no idea about the violation until I got email from strata manager recently. According to our lease agreement, you should be responsible

The tenant responds, "But I'm here now Canada. So it won't happen again..."

An account history document submitted into evidence reflect a rapidly-increasing balance owed by the landlord to the strata, with total fines of \$31,000.00 for the Airbnb activity. In addition, there is an additional fine of \$200.00 for unauthorized parking, a \$200.00 fine for damaging the concierge desk, and \$922.34 for the damage to the desk.

A Monetary Order Worksheet was submitted into evidence, and which indicates a total amount claimed of \$31,922.34. I note that the worksheet does not include the \$400.00 fines for unauthorized parking and damage to the concierge desk; however, the agent stated that the landlord wishes to claim for that amount. As such, I amend the landlord's total claim (excluding the above-noted amended amount) to \$32,322.34.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Compensation for Strata Bylaw Fines

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, the tenancy agreement included an addendum (which is considered part of the tenancy agreement) prohibiting tenants from subletting/subleasing the rental unit without the landlord's permission. The tenants, by signing the tenancy agreement, the

addendum, and Form K, were thus fully aware of the prohibition. Further, the email communication between the landlord and tenants substantiates this finding.

The tenants, in their response to the landlord's concerns and frustration with the subletting and fines, appear more concerned with why their key fobs do not work than with accepting responsibility for their violations of the rental agreement and the fines.

While aware of the prohibition, the tenants nevertheless went ahead and sublet (or "rented out") the rental unit on eight separate occasions totaling 31 overnight stays. Thus, I find that the evidence demonstrates that the tenants failed to comply with the tenancy agreement. Similarly, the alleged damage to the desk and unauthorized parking (which occurred from Airbnb guests parking without a parking pass) occurred because of the tenants' failure to comply with the tenancy agreement.

But for the tenants' non-compliance with the tenancy agreement the landlord would not have incurred \$31,200.00 in bylaw and parking fines and \$1,122.34 in property damage costs and related fine.

The landlord submitted accounting and correspondence documentation establishing the breakdown of fines and costs related to the tenants' breach. As such, I find that the agent has proven the amount, or value, of the landlord's loss.

Finally, in respect of whether the landlord did whatever was reasonable to minimize the damage or loss, I find that the landlord could have done little else but to ensure that the tenants were reminded—of something that they were already aware, of course—of the bylaws. Ultimately, the landlord took the last-ditch step and served the tenants with a One Month Notice to End Tenancy. The tenants did not dispute the notice and vacated the rental unit at or near the end of July 2019.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation caused by the tenants' breach of section 7 of the Act. Pursuant to section 67 of the Act I thus award compensation in the amount of \$32,322.34.

Compensation for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution to another party. A successful party

is generally entitled to recovery of the filing fee. As the landlord was successful in their application I therefore grant their claim for reimbursement of the \$100.00 filing fee.

Total Monetary Award and Monetary Order

I order that the landlord may retain the security deposit in the amount of \$1,445.00 in partial satisfaction of the total award. A monetary order in the amount of \$30,977.34 is issued in conjunction with this Decision.

The monetary order is calculated as $\$32,322.34 + \$100.00 - \$1,445.00 = \$30,977.34$.

Conclusion

I hereby grant the landlord a monetary order in the amount of \$30,977.34, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding, unless otherwise permitted under law, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 22, 2019

Residential Tenancy Branch