



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WESTWOOD RIDGE DEVELOPMENT
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, OPC, MNDCL-S, FFL

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On June 6, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 21, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 29, 2023, the Landlord amended their Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* and seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*.

On June 8, 2023, these matters were set down for a hearing on October 5, 2023, at 9:30 AM.

R.S. and V.L. attended the hearing as agents for the Landlord; however, neither Tenant attended at any point during the 19-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:49 AM. Only representatives for the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

As the Tenants have not attended the hearing, I dismiss their Application without leave to reapply.

R.S. advised that the Landlord's Notice of Hearing package was served to each Tenant by email on July 26, 2023, to the email addresses agreed upon in the addendum to the tenancy agreement. He stated that these emails were received by the Tenants. As well, he referenced signed proof of service forms to corroborate service. Based on this undisputed evidence, I am satisfied that the Tenants were duly served the Notice of Hearing packages.

V.L. advised that the Landlord's Amendment and evidence package were served to each Tenant by email on August 29, 2023, and that these were received as well. As this Amendment and evidence was served in accordance with the timeframe requirements of the Rules of Procedure, I am satisfied that the Tenants were duly served with these documents. As such, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to withhold the security deposit to apply towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.S. advised that the tenancy started on August 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 13, 2023. Rent was established at an amount of \$2,800.00 per month, and was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence for consideration.

Given that the tenancy had ended on September 13, 2023, there was no reason to consider the merits of the Notice.

R.S. then advised that the Landlord was seeking compensation in the amount of **\$1,550.00** because the Tenants incurred multiple bylaw fines issued by the strata for noise violations from August 2, 2022, to August 24, 2023. He testified that the Tenants were informed of the warnings from the strata and that the Tenants had 14 days to respond to them. However, he stated that the Tenants generally ignored these warnings or would deny the allegations. He submitted that the Landlord attended some strata meetings with the Tenants in an effort to help them, but the strata determined that these allegations were legitimate. He also stated that the Tenants were provided with information to contact the Civil Resolution Tribunal to dispute these strata fines. He referenced documentary evidence submitted to support the Landlord's claims. As well, he confirmed that the Tenants were provided with the strata bylaws, and signed the Form K, as indicated in the documentary evidence.

He then advised that the Landlord was seeking compensation in the amount of **\$754.16** because the tenants clogged their toilet, which overflowed and affected the resident downstairs. He referenced the invoice from the plumber, who indicated that the Tenants' toilet was plugged due to dental floss and hair.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Landlord's claims, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claims for compensation in the amount of \$1,550.00, I am satisfied from the consistent and undisputed evidence that the Tenants were negligent for the noise infractions and the subsequent fines. As such, I grant the Landlord a monetary award in the total amount of **\$1,550.00** to satisfy these claims.

Regarding the Landlord's claim for compensation in the amount of \$754.16 for the cost of fixing the clogged toilet, based on the consistent and undisputed evidence before me, I am satisfied that the Tenants were negligent for clogging the toilet. As such, I grant the Landlord a monetary award in the amount of **\$754.16** to remedy this issue.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Strata fines	\$1,550.00
Plumbing repair	\$754.16
Filing fee	\$100.00
Security deposit	-\$1,400.00
TOTAL MONETARY AWARD	\$1,004.16

Conclusion

As the Tenants have given up vacant possession of the rental unit already, and as they did not attend the hearing, I dismiss the Tenants' Application without leave to reapply.

The Landlord is provided with a Monetary Order in the amount of **\$1,004.16** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 5, 2023

Residential Tenancy Branch