



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from July 1, 2012 to June 30, 2013. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

After providing notice in January, the tenant vacated the unit on February 22, 2013. A move-out condition inspection report was completed with the participation of both parties on that same date, and the tenant provided a forwarding address on the report. Rent was paid in full to the end of February 2013. The landlord filed an application for dispute resolution on March 7, 2013.

Despite signage on the outside of the building, in addition to on-line advertising, new renters for the unit were not found until the end of April 2013. Despite this, the landlord seeks loss of rental income limited only to the month of March 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony, I find that the tenant's manner of ending the tenancy does not comply with the above statutory provisions. Further, I find that the landlord undertook to mitigate the loss of rental income by undertaking in a timely manner to advertise for new renters.

As for compensation, therefore, I find that the landlord has established entitlement to **\$1,955.33**, as follows:

\$1,100.00: *loss of rental income for March 2013*

\$805.33: *liquidated damages (per the clause in the tenancy agreement)*

\$50.00: *filing fee*

During the hearing the parties agree that at the time of the move-out condition inspection, the tenant made a payment of **\$255.33** toward the liquidated damages portion of the claim. In the result, the amount presently sought by the landlord totals **\$1,700.00** (\$1,955.33 - \$255.33).

I order that the landlord retain the security deposit of **\$550.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$1,150.00** (\$1,700.00 - \$550.00).

Finally, arising from tenant "KK's" inquiry around why co-tenant "BV," who is also named on the tenancy agreement, was not also named in the landlord's application for dispute resolution, the landlord's agent suggested that it was likely the result simply of tenant "KK's" participation in the move-out condition inspection and completion of the related report. In regard to this matter the attention of the parties is drawn to Residential Tenancy Policy Guideline # 13 which speaks to "Rights and Responsibilities of Co-tenants," in part as follows:

.....Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,150.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims 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: May 31, 2013

Residential Tenancy Branch