



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 08, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep the tenants security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent AP testifies on behalf of the landlord and states that this tenancy started on August 08, 2012. This was a fixed term tenancy which was due to expire on February 28, 2013. Rent for this unit was \$1,665.00 plus \$45.00 per month for parking and these payments were due on the 1st day of each month. The tenant paid a security deposit of \$832.50 plus a \$50.00 deposit for a parking card on August 01, 2012.

The landlord's agent testifies that the tenant gave the landlord written notice to vacate the rental unit. This Notice is dated January 04, 2013 and has an effective date of February 28, 2013. The tenant failed to pay rent for January, 2013 and the landlord served the tenant with a 10 Day Notice to End Tenancy. This Notice was served on January 09, 2013 and had an effective date of January 19, 2013. The tenant did not dispute the Notice and failed to pay the outstanding rent of \$1,665.00 or the parking fee of \$45.00 within the five days allowed.

The landlord's agent testifies that the tenant moved from the rental unit on January 30, 2013. The landlord's agent testifies that they started to advertise the unit for rent for February but the unit was not re-rented until March 06, 2013. The landlord therefore

seeks to recover a loss of rental income for February of \$1,665.00 due to the late Notice provided by the tenant.

The landlord's agent testifies that the tenant did pay the sum of \$300.00 towards the rent arrears on February 22, 2013. The tenant agreed to pay a further amount each month but has failed to make any more payments. The landlord therefore adjusts their claim for unpaid rent for January to \$1,365.00

The landlord's agent testifies that the tenancy agreement allows for a late fee to be charged to a tenant of \$25.00 if rent is unpaid by the 5th day of any month. The landlord seeks to recover a late fee for January, 2013 of \$25.00.

The landlord's agent testifies that the tenant is required to clean the drapes at the end of the tenancy. The tenant is giving a cleaning guide showing the amounts that will be charged if areas of the unit are not clean. The amount charged for cleaning the drapes is shown on this guide as being \$218.50.00. The landlord's agent testifies that the tenant attended the move out inspection of the rental unit and agreed in writing that the landlord could keep the security deposit on the inspection report for drape cleaning and other charges.

The landlord's agent testifies that the tenant failed to return the smart card for the laundry and was informed that a charge of \$56.00 is made if this smart card is not returned. The tenant also failed to return the parking hanger card for the tenants parking stall and the landlord seeks to recover \$6.50 to replace this card.

The landlord requests an Order to keep the security deposit of \$832.50 plus \$50.00 deposit for the parking card. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

Analysis

I have carefully considered all the undisputed evidence before me, including the sworn testimony of the landlord's agent. With regard to the landlords claim for unpaid rent; Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the landlord has established that there are rent arrears for January, 2013 of \$1,365.00 plus \$45.00 for parking for January. I therefore uphold the landlord's amended claim for unpaid rent and the landlord will receive a monetary award for the amount of **\$1,410.00**.

With regard to the landlords claim for late fees for January, 2013; If the tenant fails to pay rent in any given month that rent is due or if the tenant is late paying rent for more than five days; the tenancy agreement provides for a late fee of \$25.00 to be charged to the tenant. I therefore find as rent was unpaid for January, 2013 the landlord is entitled to charge a late fee of **\$25.00** and I therefore uphold the landlords claim for this amount.

With regard to the landlords claim for a loss of rental income for February, 2013; The tenant gave the landlord notice to end the tenancy on January 04, 2013. This Notice was effective on February 28 however the tenant moved from the unit on January 30, 2013. The landlord's agent has testified that the unit was advertised after the tenant had moved out but was not re-rented until March 06, 2013. I refer the tenant to s. 45(2) of the *Act* which states

(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.

As this tenancy was a fixed term tenancy that was not due to expire until February 28, 2013, I find the landlord attempted to mitigate the loss by advertising the unit but as the unit did not re-rent for February, 2013 the tenant is responsible for any loss of income for February. I therefore uphold the landlords claim to recover the amount of **\$1,665.00**.

With regard to the landlords claim for drape cleaning of \$218.00; when a tenant has agreed in writing that an amount may be deducted from a security deposit I am not required to make a decision in that matter. As the tenant has agreed on the move out condition inspection report that the landlord may deduct the cost for drape cleaning, I find that the landlord is entitled to keep the amount of **\$218.00** from the security deposit.

With regard to the landlords claim to recover the cost of replacing the smart card and the parking hanger card; I find from the evidence presented that these items were not returned to the landlord at the end of the tenancy. The tenant was informed of the charges that will be applied if these items are not returned to the landlord. I therefore find in favor of the landlords claim for **\$56.00** for the smart card and **\$6.50** for the parking hanger card.

I Order the landlord to keep the security deposit of **\$832.50** and the deposit for the parking card of **\$50.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the outstanding rent and drape cleaning.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent, parking fee and late fee for January, 2013	\$1,435.00
Loss of rental income for February, 2013	\$1,665.00
Drape cleaning deduction	\$218.50
Missing smart card and parking hanger	\$62.50
Subtotal	\$3,381.00
Plus filing fee	\$50.00
Less security deposit and parking card deposit	(-\$882.50)
Total amount due to the landlord	\$2,548.50

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,548.50**. The order must be served on the respondent and is enforceable through the Provincial Court 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 02, 2013

Residential Tenancy Branch

