



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, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The parties were informed that the late submission received from the tenant's advocate would not be accepted or considered pursuant to the Rules of Procedure; however, the tenant would be provided the opportunity to orally submit relevant submissions during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenant had been occupying another rental unit at the residential property before moving to the subject unit on December 4, 2012. The parties executed a written tenancy agreement indicating the tenancy would be for a fixed term set to expire December 31, 2013 and that the tenant would be required to pay rent of \$1,015.00 on the 1st day of every month. The landlord collected a security deposit of \$507.50. The landlord prepared a condition inspection report at the beginning and end of this tenancy.

The tenant gave the landlord written notice dated April 12, 2013 that he intended to end the tenancy on May 1, 2013. The landlord presented the tenant with a "Breaking Lease Form" informing the tenant of his continued obligation to pay rent until such time the unit was re-rented.

The tenant returned possession of the unit to the landlord by April 30, 2013 and signed the move-out inspection report authorizing the landlord to deduct \$235.86 for carpet and drapery cleaning.

The landlord amended the application to reduce its claims against the tenant as follows:

Loss of rent for May 2013: \$1,015.00

The landlord submitted that the landlord commenced advertising efforts shortly after receiving the tenant's notice to vacate. Despite the landlord's efforts, the rental unit was not re-rented unit June 1, 2013. Consequently, the landlord is seeking to recover the loss of one month's rent from the tenant.

The tenant submitted that he orally advised the manager in March 2013 that he intended to end the tenancy. The manager did not inform the tenant that he had to give his notice in writing. The tenant submitted that he should not have to pay for the loss of rent due to the landlord's failure to inform the tenant of his obligations to give written notice.

The tenant submitted that the landlord informed him that he would owe nearly \$8,000.00 to the landlord if he broke his lease. Accordingly, he refused to sign the "Breaking Lease Form".

The tenant submitted that he had assumed the fixed term tenancy ended in February 2013 as he had transferred from another unit and that lease had been set to expire in February 2013.

The tenant submitted that the landlord's evidence shows that the Craigslist advertisement start May 8, 2013 despite giving the landlord written notice April 12, 2013. Furthermore, the tenant had a friend who was interested in renting his unit. The tenant submitted that his friend talked to the manager about renting the unit but the manager did not get back to him as promised.

The landlord responded by stating that advertising efforts commenced right away even if the documentary evidence submitted does not demonstrate such. The landlord submitted that the landlord has numerous rental units at the property and makes every

reasonable effort to re-rent units. For example: the landlord subscribes to monthly advertising services for all available units; has a leasing agent on premises; and, maintains a list of all vacant and upcoming units to offer prospective tenants.

The building manager testified that she did not recall any conversation with the tenant's friend about the rental unit coming available.

The tenant requested that his friend be called as a witness to establish that this person did enquire about the rental unit. I placed a call to the witness' telephone number as provided by the tenant. The person that answered the call informed me that the witness was not available. Consequently, I was unable to hear from the tenant's witness during the time scheduled for this hearing.

Carpet and drapery cleaning (actual costs): \$94.50 and \$95.55

Although the tenant has authorized deductions for estimated amounts for carpet cleaning and drapery cleaning at the time of the move-out inspection, the landlord is seeking to recover the actual costs which are less than the estimated costs.

The tenant submitted that the tenancy was only five months in duration and questioned the tenant's obligation to pay for such cleaning costs where the tenancy is so short.

I noted that the move-out inspection report that the tenant signed indicated the carpets and drapes were "dirty". The tenant submitted that he did not understand the document he signed. The landlord pointed out that the tenant had a translator with him during the time of the move out inspection. The tenant did not deny the landlord's assertion that a translator was present.

Analysis

Upon consideration of everything presented and accepted under the Rules of Procedure, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Loss of Rent for May 2013

Upon review of the tenancy agreement signed by the parties, I am satisfied the tenant agreed to rent the subject rental unit for a fixed term set to expire December 31, 2013. The tenant ended the tenancy earlier than December 31, 2013 which is a breach of the tenancy agreement and the Act.

I am satisfied the rental unit remained vacant until June 1, 2013 based upon the landlord's undisputed testimony and considering the evidence that the unit was being advertised in the month of May 2013.

It is upon each party that enters into a tenancy agreement to understand the terms they are agreeing to be bound by, as reflected in tenancy agreement and the Act. The tenancy agreement and the Act do not permit a tenant to end their tenancy by way of verbal notice. The tenancy agreement and the Act do not require the landlord to inform the tenant his obligation to given written notice to end tenancy where the tenant attempts to end the tenancy verbally. If the landlord gives a tenant such information it is merely a courtesy rather than a legal requirement. Therefore, I reject the tenant's submissions that the landlord was obligated to inform the tenant of the need to put a notice to end tenancy in writing.

Where a tenant ends a fixed term tenancy early, the landlord may be entitled to recover loss of rent for the remainder of the fixed term from the tenant. However, the landlord remains obligated to take reasonable steps to mitigate its loss.

Where a landlord accepts the tenant's notice to end a fixed term tenancy early the landlord should put the tenant on notice that the landlord intends to hold the tenant responsible for the any loss of rent for the remainder of the fixed term. One of the purposes of such notice to the tenant is so that the tenant is aware of the financial consequences of their decision to end the tenancy early. In the matter before me, the landlord did put the tenant on notice as to its intention to hold the tenant responsible by presenting him with the "Breaking Lease Form" and I find the landlord acted appropriately in the circumstances.

I am satisfied the landlord is entitled to recover loss of rent for the month of May 2013 and took reasonable action to mitigate its loss of rent considering:

- Giving a landlord verbal notice to end tenancy is not effective unless the landlord accepts the verbal notice and waives its entitlement to receive written notice;
- The tenant gave very short notice of his intent to end the tenancy, only 18 days, prior to returning possession of the unit to the landlord;
- The tenant refused to sign the "Breaking Lease Form" which would confirm the tenant was aware of his continued obligation under the lease and still wanted to end the tenancy early;
- The landlord has multiple rental units at the residential property and I accept the landlord's submissions that it also subscribes to advertising venues other than Craigslist and has a leasing agent available on site; and,

- The tenant was unable to prove that a prospective tenant, his friend, had enquired with the manager about renting the subject unit.

In light of the above, I grant the landlord's request to recover loss of rent for the month of May 2013 from the tenant in the amount of \$1,015.00.

Carpet and drapery cleaning

Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Act and Regulations is the best evidence of the condition of a rental unit unless there is a preponderance of evidence to the contrary. I was presented a move-out inspection report indicating the carpets and drapery was dirty. I was not presented a preponderance of evidence that would contradict the move-out inspection report.

I reject the tenant's submission that he did not understand the move-out inspection report as a legal basis to deny the landlord's claim for cleaning costs. If the tenant does not understand written English then it is upon him to take appropriate action to ensure he has the assistance he needs, such as bring a translator. In this case, I heard undisputed testimony that the tenant did bring a translator with him to the move-out inspection.

In light of the above, I accept that the carpets and drapery was dirty at the end of the tenancy, in need of additional cleaning, and that the landlord incurred costs to have these items cleaned. Therefore, I hold the tenant responsible for compensating the landlord the actual costs as claimed by the landlord.

Filing fee, security deposit, and Monetary Order

Given the landlord's success in the application I award the filing fee to the landlord.

I authorize the landlord to retain the entire security deposit in partial satisfaction of the amounts awarded to the landlord.

The landlord has been provided a Monetary Order in the amount calculated as follows:

Loss of Rent for May 2013	\$ 1,015.00
Carpet cleaning	94.50
Drapery cleaning	95.55
Filing fee	50.00
Less: security deposit	<u>(507.50)</u>
Monetary Order	\$ 747.55

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$747.55 to serve and enforce as necessary,

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: August 23, 2013

Residential Tenancy Branch

