



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to 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 / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

The landlord's agent's request during the hearing to amend the application to include retention of the security deposit was granted.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

As the tenant did not provide a forwarding address at the end of tenancy, the address used for service of the hearing package is the address provided by the tenant on his application for tenancy under "next of kin, doctor or other persons for emergency contact purposes." Pursuant to section 71 of the Act which addresses **Director's orders: delivery and service of documents**, I find that the hearing package has been "sufficiently served for the purposes of this Act."

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 December 1, 2012 to November 30, 2013. Monthly rent of \$1,275.00 was due and payable in

advance on the first day of each month, and a security deposit of \$637.50 was collected. A move-in condition inspection report was completed with the participation of both parties.

The tenant gave notice in writing on March 30, 2013 of his intent to vacate the unit on or before May 1, 2013. Subsequently, the tenant vacated the unit on April 30, 2013, and a move-out condition inspection report was completed with the participation of both parties.

The unit was re-rented effective June 15, 2013 for a monthly rent of \$1,250.00, which is \$25.00 less than rent paid by the subject tenant.

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.

Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent."

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the landlord has established entitlement to a claim of **\$2,863.61**, as follows:

\$1,275.00: *loss of rental income for May*
\$595.00: *loss of rental income for the period June 1 to 14*
\$13.28: *loss of rental income for the period June 15 to 30*
\$125.00: *loss of rental income for the 5 month period July to November (5 x \$25.00)*
\$805.33: *liquidated damages (pursuant to the written tenancy agreement)*
\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$637.50**, and I grant the landlord a monetary order for the balance owed of **\$2,226.11** (\$2,863.61 - \$637.50).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,226.11**. 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: September 17, 2013

Residential Tenancy Branch

