



Dispute Resolution Services

Page: 1

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 MNDC, MNSD, FF

Introduction

This was a hearing with respect to an application by the landlord for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representatives called in and participated in the hearing. The tenant did not attend although she was served with the application for dispute resolution and Notice of Hearing by registered mail

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain a sum awarded from the security deposit that it holds?

Background and Evidence

The rental unit is an apartment in Burnaby. The tenancy began on May 25, 2013 for a fixed term ending on May 31, 2014. The monthly rent was \$1,010.00 and the tenant paid a security deposit of \$505.00 at the start of the tenancy.

The tenancy agreement contained a liquidated damage provision that entitled the landlord to claim the sum of \$300.00 as liquidated damages as the cost of re-renting the unit in the event that the tenant ended the tenancy before the end of the fixed term. The tenant gave notice on June 29th that she intended to end the tenancy and move out of the rental unit on July 31, 2013. The tenant moved out of the rental unit on July 31st. She signed an agreement authorizing the landlord to retain \$300.00 from her damage deposit in payment of the landlord's entitlement to liquidated damages as provided by the tenancy agreement.

The landlord succeeded in re-renting the unit effective August 1, 2013 and the landlord's sole claim in this application for dispute resolution is for payment of liquidated damages in the amount of \$300.00.

Analysis and Conclusion

I find that the landlord is entitled to recover liquidated damages as claimed and as provided by the tenancy agreement in the amount of \$300.00 as a consequence of the tenant's breach of the fixed term tenancy agreement and I order that the landlord retain the said sum from the \$505.00 security deposit that it holds. Because the tenant agreed in writing to this deduction from her security deposit, I find that the landlord's application was not necessary and I therefore decline to award the landlord the \$50.00 filing fee for this application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of its monetary claim. Because there is an amount remaining due to the tenant after the award to the landlord, it is appropriate that I order the return of the balance of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$205.00. This order may be registered 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: November 21, 2013

Residential Tenancy Branch

