



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 OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on October 24, 2013. The Landlord said the registered mail packages were returned as refused. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

At the start of the conference call the Landlord said the tenancy ended on October 31, 2013 and the Landlord has possession of the unit. Consequently there is no need for an Order of Possession therefore; I am withdrawing the Landlord's request for an Order of Possession.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on October 1, 2012 as a 1 year fixed term tenancy with an expiry date of September 30, 2013. Rent was \$1,625.00 per month and the parking fee was \$45.00 per month, both payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$812.50 on September 14, 2012. The Landlord said condition inspection reports were completed on October 1, 2012 and October 31, 2013.

The Landlord said that the Tenant did not pay \$1,695.00 of rent for October, 2013, when it was due and as a result, on October 8, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant gave their notice to move out of the unit on October 18, 2013 which is not the full 1 month to end the tenancy therefore the Landlord is requesting lost rental income for November, 2013 in the amount of \$1,625.00.

Further the Landlord said there was damage to the rental unit, but the Landlord did not include these items in this application. The Landlord said she may make an additional application.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding and to retain the Tenant's security deposit of \$812.50 as partial payment of the unpaid rent.

The Landlord said her total claim is for \$3,370.00

Analysis

Section 26 says 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.

Section 45 of the Act says a Tenant may end a period tenancy with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlord proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$1,695.00 for the month of October, 2013.

I also find that as the Landlord was not given proper notice to end the tenancy the Landlord was unable to rent the unit for November, 2013 and the Landlord is entitled to recover lost rental income for the month of November, 2013 in the amount of \$1,625.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,695.00	
	Loss of Rental Income:	\$1,625.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,370.00
Less:	Security Deposit	\$ 812.50	
	Subtotal:		\$ 812.50
	Balance Owing		\$2,557.50

Conclusion

A Monetary Order in the amount of \$2,557.50 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 04, 2013

Residential Tenancy Branch

