



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 MNSD, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for loss under the Act, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for loss under the Act?
Is the landlord entitled to a monetary order for damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on May 1, 2011. Current rent in the amount of \$1,255.00 was payable on the first of each month. A security deposit of \$615.00 was paid by the tenants. The tenancy ended on April 30, 2013.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Loss of revenue for May 2013	\$ 566.72
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b.	Carpet cleaning	\$ 105.00
c.	General cleaning	\$ 114.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 815.22

Loss of revenue for May 2013

The landlord's agent testified that the tenants provided insufficient notice to end the tenancy as they did not receive the notice to end tenancy until April 3, 2013 with an effective vacancy date of April 30, 2013. The landlord's agent stated that they immediately advertised the rental unit on a popular local website, however, was not able to find a new tenant until May 15, 2013. The landlord's agent stated they were able to recover a portion of rent from the new tenant. The landlord seeks to recover loss of revenue in the amount of \$566.72. Filed in evidence are copies of the posted advertisement.

The tenants testified that they provided notice to the landlord which was left in the landlord's mailbox on March 31, 2013.

Carpet cleaning

The landlord's agent testified that the tenants did attempt to shampoo the carpets with a rented carpet cleaner, however, the carpets were left in bad condition as they were covered with stains. The landlord's agent stated they had to hire a professional carpet cleaning company to have the stains removed. The landlord seeks to recover the cost of having the carpets cleaned in the amount of \$105.00. Filed in evidence is a copy of the move-out condition inspection Report. Filed in evidence are photographs of the carpets. Filed in evidence is an invoice for carpet cleaning.

The tenants testified that they cleaned the carpets at the end of the tenancy. The tenants stated that there were some stains. However, when they asked the landlord's agent if they would like them to re-clean the carpets as they still had the carpet cleaning machine they were told that was not required as it was likely the carpets would have to be replaced.

The witness for the landlord denied that he told the tenants that the landlord was going to replace the carpets. The witness stated that he might have told the tenants that the carpets were in bad shape and might have to be replaced due to the staining which was caused by the tenants.

General cleaning

The landlord's agent testified that they did agree in the move-out condition inspection report that the hourly rate for general cleaning was \$25.50. The landlord's agent stated that hourly rate was in error as the hourly rate should have been \$28.50.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of revenue for May 2013

Section 45 of the Residential Tenancy Act states:

- 45 (1) A tenant may end a periodic 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, and*
 - (b) 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*

The evidence of the landlord's agent was that they did not receive the tenants notice to end the tenancy until April 3, 2013 to end the tenancy on April 30, 2013. The evidence of the tenant was that they place the notice to end the tenancy in the landlord's mailbox on March 31, 2013.

I accept the evidence of the tenants that they left their notice in the landlord's mailbox on March 31, 2013. However, under the legislation a document served in this matter is not deemed served until the third day after leaving it, unless there is clear evidence to the contrary.

In this case, the landlord acknowledged it was received on April 3, 2013, which the notice was date stamped by the building manager. I find the tenants have failed to provide any evidence to the contrary. As a result, I find the notice to end the tenancy was received on April 3, 2013.

Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was May 31, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for a portion of May 2013, rent. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. However, under section 7 of the Act, the party who claims compensation for loss that result from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was that they immediately advertised the rental unit on a popular local website and were able to find a new tenant for May 15, 2013, and recovering a prorated amount of rent from the new tenant. As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$566.72**.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Carpet cleaning

In this case, the evidence was that the tenants did attempt to clean the carpets as required by the Residential Tenancy Policy Guideline using a rented carpet cleaner. However, that cleaning was unsuccessful as stains remained on the carpets. The

photographs support that staining was left behind. As a result, I find the tenants breached section 37 of the Act, when they failed to have the stains removed as this is not considered normal wear and tear. Therefore, I find the landlord is entitled to recover the cost of having the carpets professional cleaned in the amount of **\$105.00**.

General cleaning

In this case, the parties agreed in the move-out condition inspection report to the amount of \$102.00 for four hours of general cleaning at the rate of \$25.50. The landlord seeks a rate of \$28.50. However, I find the parties had already mutually agreed to the rate of \$25.50. Therefore, I find the landlord is entitled to recover the amount agreed upon in the move-out condition inspection report in the amount of **\$102.00**.

I find that the landlord has established a total monetary claim of **\$823.72** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$615.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$208.72**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 07, 2013

Residential Tenancy Branch

