



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail within three days of filing their application for dispute resolution on October 15, 2013. The landlord provided the customer receipt showing the tracking number, but did not provide the payment receipt showing the exact date the registered mail was sent or other evidence showing the exact date the registered mail was sent.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord submitted that this tenancy began on August 1, 2012, that the tenancy ended on October 1, 2013, when the tenant vacated the rental unit, monthly rent was \$1400, and the tenant paid a security deposit of \$700 and a remote deposit at the beginning of the tenancy.

The landlord's monetary claim is \$1600, comprised of loss of rent revenue for October in the amount of \$1400, cleaning for \$150, and the filing fee of \$50.

The landlord requests to retain the security deposit and the remote deposit of \$75.

In support of their application, the landlord testified that the tenant gave the landlord his notice to vacate on September 30, 2013, and moved out the following day, which caused the landlord to suffer a loss of income for October 2013, due to the insufficient notice.

The landlord said the rental unit required cleaning, but after an examination of the move-out condition inspection report at the hearing, the landlord agreed that cleaning was not marked on the final condition inspection report and that charge would be waived.

The landlord explained that they are holding a deposit for the key fob, and requested to keep that amount in partial satisfaction of a monetary award.

The landlord's relevant documentary evidence included the condition inspection report, the written tenancy agreement, and the tenant's notice to vacate.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant 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.

As to the issue of loss of revenue, Section 45 (1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy.

In the case before me, as the tenant provided one day's notice, I find the tenant failed to provide the landlord sufficient notice as required under the Act, and that the tenant's breach of the Act caused the landlord to suffer a loss of rent revenue for October 2013.

I therefore approve the landlord's monetary claim for \$1400.

As the landlord waived their request for cleaning for \$150, I have not addressed the same.

I award the landlord recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1450, comprised of loss of rent revenue for \$1400 and the filing fee of \$50.

Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlord's request, I direct them to retain the tenant's security deposit of \$700 and the tenant's remote deposit of \$75 in partial satisfaction of their monetary award of

\$1450 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$675, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I note that under other circumstances, I would order the landlord to return the refundable fee for the remote deposit, as these are deposits which should be returned to the tenant at the end of the tenancy. I allowed the landlord to retain this amount to further satisfy their monetary award.

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* and is being mailed to both the applicant and the respondent.

Dated: January 23, 2014

Residential Tenancy Branch

