



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES SEASIDE PLAZA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, OPR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent / loss of revenue and inclusive of recovery of the filing fee associated with this application, and an Order of Possession - determined to be unnecessary as the tenant has vacated.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The following is undisputed. The landlord and tenant entered into a written tenancy agreement on November 13, 2013 to rent the rental unit as of December 01, 2013 for \$1425.00 per month. The landlord collected a security deposit in the amount of \$712.50 which the landlord retains in trust. The tenant moved some of their belongings in before the start of the tenancy of December 01, 2013 and testified they vacated the unit shortly thereafter before the contractual start date of the tenancy. During the first week of the tenancy the tenant sent the landlord an explanation by e-mail that they would not continue the tenancy for a myriad of reasons including the presence of silverfish and noise from the heating system and the parking garage gate. The landlord testified they

were able to enter into a new tenancy agreement for February 01, 2014. The landlord seeks unpaid rent for the first month of the tenancy agreement.

Analysis

On the preponderance of the evidence of the landlord and tenant I have reached a decision.

Section 16 of The Act states as follows:

Start of rights and obligations under tenancy agreement

- 16.** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that in this matter, a tenancy existed between the parties upon them entering the tenancy agreement and the landlord collecting the security deposit. The parties' respective rights and obligations under the Act came into full force on November 13, 2013.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

I find that if the tenant determined not to continue the tenancy, the tenant was obligated to give the landlord valid Notice to End under Section 45 of the Act. I find that the tenant's e-mail of early December 2013 placed the landlord on notice the tenant was not going to continue occupying the rental unit; however, it is not valid or legal notice to end the tenancy. Even if I were to accept that the tenant's notice of early December 2013 as valid notice to end the tenancy, it remains that the tenant did not pay rent in the first month of the tenancy to which the landlord is entitled under the tenancy agreement.

As a result of all the above, I grant the landlord unpaid rent in their application amount of \$1425.00. The landlord is further entitled to their filing fee of \$50.00, for a sum of \$1475.00. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent for December 2013	\$1425.00
Filing Fees for the cost of this application	50.00

Less Security Deposit	-712.50
Total Monetary Award to landlord	\$762.50

Conclusion

I Order that the landlord retain the deposit of \$712.25 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$762.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: February 11, 2014

Residential Tenancy Branch

