



Dispute Resolution Services

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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 MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee.

An agent for the landlord, "MD", (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing and evidence was served on the tenant by registered mail on October 20, 2013. The agent provided a registered mail tracking number in evidence and confirmed that when the package was tracked online, the package was shown as "successfully delivered" on October 22, 2013. The agent testified that the package was addressed to the tenant's forwarding address provided in writing on the tenant's notice to end the tenancy dated August 30, 2013. Based on the above, I accept that the tenant was deemed served as of October 22, 2013, when the registered mail package was successfully delivered to the tenant's new forwarding address.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and garage remote/parking tag deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2012, and reverted to a month to month tenancy after July 31, 2013. Monthly rent in the amount of \$1,280.00 was due on the first day of the month. A security deposit of \$640.00 and a \$100.00 deposit for a garage remote and a parking tag were paid by the tenant, which the landlord continues to hold.

The landlord has claimed \$740.00 comprised of \$315.00 for 7 hours of cleaning, \$100.00 for the garage remote and parking tag which were not returned, \$205.00 for garbage disposal, and \$120.00 to replace a damaged living room blind.

The landlord provided a copy of the tenant's one month notice to end the tenancy dated August 30, 2013, which indicated that the tenant would be vacating the rental unit on September 30, 2013. The agent stated that the tenant did not vacate the rental unit until October 2, 2013. The landlord applied for dispute resolution on October 11, 2013, claiming towards the tenant's security deposit.

The landlord submitted a copy of the condition inspection report in evidence and a Notice of Final Opportunity to Schedule a Condition Inspection. The agent stated that the outgoing condition inspection was scheduled for September 30, 2013 at 3:00 p.m. and 5:00 p.m. by posting the notice to the tenant's door, and that the tenant did not answer his door at either time to participate in the outgoing inspection. As a result, the agent stated that on October 4, 2013, the landlord completed the outgoing condition inspection report himself.

The landlord has claimed \$315.00 for cleaning the rental unit which, according to the agent, was left in a dirty condition by the tenant at the end of the tenancy. The landlord submitted an invoice dated October 7, 2013, indicating that the rental unit required 7 hours of cleaning for a total, including taxes, of \$315.00. The agent referred to the condition inspection report which the agent indicated supports that the rental unit required cleaning.

The landlord has claimed \$100.00 to replace the garage remote and parking tag, which the agent stated were not returned by the tenant. The condition inspection report indicates that the garage remote and parking tag were not returned by the tenant when the tenant vacated the rental unit. As the landlord continues to hold the tenant's garage remote and parking tag deposit of \$100.00, the landlord is seeking authorization to

retain the garage remote and parking tag deposit of \$100.00 as neither item was returned by the tenant at the end of the tenancy.

The landlord has claimed \$205.00 for garbage disposal. The agent referred to an invoice dated October 1, 2013, and to which the agent stated the document should have been dated October 2, 2013, which was an administrative error. The agent testified that they hired a company, "RRR" which disposed of the garbage left behind by the tenant in the rental unit at the end of the tenancy. The agent referred to the condition inspection report which supports that garbage disposal was required at the end of the tenancy, and the invoice submitted in evidence which supports the amount being claimed for this portion of the landlord's claim.

The final item being claimed by the landlord is \$120.00 for a living room blind track replacement which the agent stated was broken by the tenant. The agent referred to the condition inspection report which supports that the living room blind needed to be replaced at a cost of \$120.00.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's claim for cleaning costs – The landlord is seeking \$315.00 for cleaning the rental unit which, according to the agent, was left in dirty condition by the tenant. The landlord submitted an invoice dated October 7, 2013, that I find supports that the rental unit required 7 hours of cleaning for a total, including taxes, of \$315.00. I find that

the condition inspection report submitted in evidence supports that the rental unit required cleaning at the end of the tenancy. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

Based on the above, **I find** the tenant breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition at the end of the tenancy. Given the above, **I find** the landlord has met the burden of proof in proving this portion of their claim. Therefore, **I grant** the landlord **\$315.00** for cleaning costs as claimed.

Landlord's claim for garage remote and parking tag replacement costs - The landlord has claimed \$100.00 to replace the garage remote and parking tag, which the agent stated were not returned by the tenant. I find the condition inspection report supports that the garage remote and parking tag were not returned by the tenant when the tenant vacated the rental unit. **I find** the landlord has met the burden of proof and **I grant** the landlord **\$100.00** in compensation as claimed.

Landlord's claim for garbage disposal - The landlord has claimed \$205.00 for garbage disposal and the agent referred to an invoice dated October 1, 2013. I accept the agent's testimony that the document should have been dated October 2, 2013, due to an administrative error. I accept the agent's undisputed testimony that they hired a company, "RRR", which disposed of the garbage left behind by the tenant in the rental unit at the end of the tenancy as this is supported by the documentary evidence. I find the condition inspection report also supports that garbage disposal was required at the end of the tenancy, and the invoice submitted in evidence which supports the amount being claimed for this portion of the landlord's claim.

Section 37 of the *Act* requires that a tenant leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. I find the tenant breached section 37

of the *Act*, by leaving garbage in the rental unit at the end of the tenancy. Therefore, **I find** the landlord has met the burden of proof for this portion of their claim and is entitled to **\$205.00** in compensation for the cost of disposing of the tenant's garbage left behind in the rental unit at the end of the end of the tenancy.

Landlord's claim for living room blind replacement – The landlord has claimed \$120.00 for a living room blind track replacement. I accept the agent's undisputed testimony that the tenant broke the living room blind as this is supported by the condition inspection report. Therefore, **I find** the landlord has met the burden of proof for this portion of their claim and is entitled to **\$120.00** in compensation for the cost of the living room blind replacement.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find the landlord has established a total monetary claim in the amount of **\$790.00**, comprised of \$315.00 for cleaning costs, \$100.00 for a garage remote and parking tag, \$205.00 for garbage disposal, \$120.00 for the living room blind replacement, plus the \$50.00 filing fee. The landlord continues to hold the tenant's security deposit of \$640.00 and \$100.00 garage remote and parking tag deposit. None of the deposits held by the landlord have accrued interest to date.

I ORDER the landlord to retain the tenant's full security deposit of \$640.00 and full garage remote and parking tag deposit of \$100.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$50.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$790.00. The landlord has been ordered to retain the tenant's full security deposit of \$640.00 and full garage remote and parking tag deposit of \$100.00, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$50.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2014

Residential Tenancy Branch

