



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 MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:42 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord Representative PD (the landlord) testified that on October 30, 2013, the tenants gave the landlords their written notice to end this tenancy by November 26, 2013. The landlord entered into written evidence a copy of the tenants' written notice to end this tenancy. The landlord testified that the landlord sent both tenants copies of the landlord's dispute resolution hearing package and written evidence package by registered mail on December 6, 2013. The landlord entered into written evidence copies of the Canada Post Tracking Numbers to confirm these registered mailings. At the hearing, the landlords checked Canada Post's online tracking system and testified that the landlord's packages were successfully delivered on December 11, 2013.

Based on the landlord's undisputed sworn testimony and written evidence and in accordance with sections 89(1) and 90 of the *Act*, I find that the hearing and evidence packages were deemed served to the tenants on December 11, 2013, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit

in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commencing on August 1, 2013, was scheduled to end on July 31, 2014. Monthly rent was set at \$1,330.00, payable on the first of each month. The landlord continues to hold the tenants' \$665.00 security deposit paid on July 11, 2013.

The landlord entered into written evidence signed copies of the Residential Tenancy Agreement (the Agreement) and the joint move-in and joint move-out condition inspection reports of August 1, 2013 and November 25, 2013.

The landlord application for a monetary award of \$895.33 included a request for \$805.33 in liquidated damages and \$90.00 in cleaning.

The landlord noted that section 5 of the Agreement called for the payment of \$805.33 in the event that the tenants ended their fixed term tenancy before the scheduled end to this tenancy. Section 5 of the Agreement reads as follows:

LIQUIDATED DAMAGES. *If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in (B) above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$805.33 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property...*

The landlord entered into written evidence a copy of emails exchanged between the landlord's building manager and the male tenant. These emails confirmed that if the tenants had been successful in finding a new tenant as appeared likely in late October 2013, that the landlords would reduce the amount of the requested liquidated damages applied to \$300.00. However, the landlord testified that the prospective tenants identified by the tenants did not sign a tenancy agreement for this rental unit and that the landlord had to locate new tenants themselves. The landlord testified that the landlords were able to find new tenants who took occupancy by December 1, 2013, paying the same \$1,330.00 monthly rent for a 10-month term, as was set out in the original Agreement. Under these circumstances, the landlord only applied for the

liquidated damages charge and did not seek loss of rent from the tenants for any portion of the remaining fixed term Agreement.

The landlord also testified that the cleaning required at the end of this tenancy to the kitchen and appliances, and to clean light fixtures, baseboards, windows and closet tracks were conducted by the landlord's own cleaning staff. These deficiencies were noted in the joint move-out condition inspection report, signed by one of the tenants on November 25, 2013.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage

There was an arrangement between the male tenant and the landlord's building manager whereby the landlord would reduce the amount of liquidated damages charged to the tenants at the end of this tenancy. However, I accept the landlord's undisputed sworn testimony and supporting written evidence that this reduction was contingent upon the tenants successfully finding new tenants for this rental unit. As the landlord gave undisputed sworn testimony that this did not occur, I allow the landlord's claim of \$805.33, the amount identified as a pre-estimate of the landlord's estimated costs of re-renting the rental unit.

Based on the landlord's joint move-in and move-out condition inspection reports, I find that the tenants did not leave the rental unit "reasonably clean" as required by section 37(2) of the *Act*. However, in the absence of any actual receipts or invoices from the landlord for the costs of cleaning this rental unit at the end of this tenancy, I allow the landlord \$25.00 per hour for 2 hours instead of the \$45.00 per hour for two hours cited in the landlord's joint move-out condition inspection report, the only document submitted by the landlord where there was any reference to the cleaning costs.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued to the landlord. No interest is payable over this period. The landlord is also entitled to recover the \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damages, losses and the filing fee and to retain the tenants' security deposit:

Item	Amount
Liquidated Damages	\$805.33
Cleaning (2 hours @ \$25.00 = \$50.00)	50.00
Less Security Deposit	-665.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$240.33

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 28, 2014

Residential Tenancy Branch

