



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

The application for dispute resolution and notice of hearing (the "hearing package") was served by way of registered mail, however, the tenants did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The landlord's agent testified that the hearing package was addressed to the tenants at the address they provided on the move-out condition inspection report. Ultimately, however, the hearing package was returned to the landlord.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the 1 year fixed term of tenancy was from October 01, 2013 to September 30, 2014. Monthly rent of \$900.00 was due and payable in advance on the first day of each month, and a security deposit of \$450.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

The tenants gave notice on November 01, 2013 of their intent to end tenancy effective November 30, 2013. A move-out condition inspection report was completed with the participation of both parties. The tenants provided their forwarding address on the

move-out condition inspection report. New renters were found effective from December 01, 2013.

Arising from the tenants' early end of the fixed term tenancy, the landlord seeks to recover liquidated damages of \$805.33, in addition to the \$50.00 filing fee.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Clause # 5 of the tenancy agreement entered into by the parties reads as follows:

5. 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 upon 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.

Residential Tenancy Policy Guideline # 4 speaks to "Liquidated Damages," in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenants breached the tenancy agreement by ending tenancy before the end of the fixed term. I also find that the liquidated damages clause in the tenancy agreement is valid. Following from all the foregoing, and in consideration of the statutory and guideline provisions referenced above, I find that the landlord has established a claim of **\$855.33**:

\$805.33: *liquidated damages*

\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$450.00**, and I grant the landlord a **monetary order** for the balance owed of **\$405.33** (\$855.33 - \$450.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$405.33**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order 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: April 01, 2014

Residential Tenancy Branch

