



Dispute Resolution Services

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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:

MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages, cost of cleaning and for the filing fee. The landlord also applied to retain the security deposit.

Service of the hearing document, by the landlord to the tenant, was done in accordance with section 88 of the *Residential Tenancy Act*. The landlord served a copy of her application and the notice of hearing to the tenant by registered mail on December 10, 2013, to the address provided by the tenant on the move out inspection report. The landlord filed a tracking number.

Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cost of cleaning and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on September 01, 2013 for a fixed term ending August 31, 2014. The rent was \$1,350.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$675.00 and a key deposit of \$100.00. The tenant moved out on November 28, 2013. The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages as follows:

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“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 or any other amounts owed by the tenant such as unpaid rent or for damage to the rental unit or residential property.

On November 01, 2014, the tenant visited the office of the landlord and verbally gave notice to end the tenancy but refused to sign the required form to give notice because it indicated that the effective date of the notice was December 31, 2013 and the tenant wanted the effective date to be November 30, 2013. Eventually the tenant signed the form on November 13, 2013, giving the landlord written notice to end the tenancy.

The landlord testified that she started looking for a new tenant on November 13, 2014 and had 5-7 showings during the month of November, but failed to find a tenant for December 2013. A new tenant was found for January 01, 2014.

The landlord stated that the carpet was not washed and the mirror and windows were not cleaned by the tenant prior to moving out. The tenant disagreed with the condition of the unit as described by the landlord in the move out inspection report. The landlord did not file any receipts or photographs to support her claim for the cost of cleaning.

The landlord is claiming the following:

1.	Loss of income for December 2013	\$1,350.00
2.	Liquidated damages	\$805.33
3.	Carpet cleaning	\$95.00
4.	Cleaning	\$90.00
5.	Filing fee	\$50.00
	Total	\$2,390.33

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the landlord, I find that, the tenant gave notice to end the tenancy prior to the end date of the fixed term and after the day rent is due. By not giving the landlord adequate notice to end the tenancy, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. In this case, on November 13, 2013, the tenant gave written notice to end the tenancy effective November 30, 2013. The landlord made attempts to re-rent the unit but was unsuccessful at finding a tenant for December 2013. I find that the tenant did not provide adequate notice to end the tenancy and accordingly the landlord is entitled to the loss of income suffered in December 2013.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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.

In this case, the tenant signed in agreement to paying liquidated damages of \$805.33 in the event that he ended the lease prior to the end of the fixed term. Therefore I award the landlord \$805.33 for liquidated damages.

Regarding the cost of cleaning the landlord has claimed the cost of washing the carpet and general cleaning to which the tenant disagreed, as noted in the move out inspection report. *Residential Tenancy Policy Guideline#1* states that the tenant is responsible for periodic cleaning of the carpet to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

In this case the tenancy lasted for three months. Since the tenancy was not one year in length and based on policy guideline #1, I find that the tenant is not responsible for the cost of washing the carpet. The landlord also did not file any receipts or photographs to support her claim for the cost of general cleaning and therefore, I dismiss the landlord's claim for washing the carpet and for general cleaning.

Since the landlord has proven a portion of her case, I find that she is also entitled to the recovery of her filing fee, in the amount of \$50.00.

Overall the landlord has established a claim as follows:

1.	Loss of income for December 2013	\$1,350.00
2.	Liquidated damages	\$805.33
3.	Carpet cleaning	\$0.00
4.	Cleaning	\$0.00
5.	Filing fee	\$50.00
	Total	\$2,205.33

I order that the landlord retain the security and key deposits of **\$775.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$1,430.33**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,430.33**.

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

