



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES ENGLISH BAY TOWERS  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** MNR, MND, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order for liquidated damages, loss of revenue for 2 months of the fixed term, cleaning costs, garbage removal costs and repairs. The landlord seeks to keep the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the landlord is entitled to monetary compensation for liquidated damages, loss of revenue, cleaning and disposal?

### **Background and Evidence**

The tenancy began as a fixed term on June 1, 2013 and was to end on May 31, 2014. Rent was set at \$1,400.00. A security deposit of \$700.00 and key deposit of \$100.00 were paid and are still being held. On January 28, 2014 the tenant gave Notice to vacate effective March 1, 2014.

The landlord testified that the tenant vacated on March 6, 2014. However, the tenant stated that he actually vacated on February 6, 2014 after paying for February rent and completely surrendered possession to the landlord by the end of that month. The tenant testified that he was told by the building manager that he could vacate without worrying about costs associated with terminating the fixed term tenancy. The tenant pointed out that he would not have vacated otherwise.

Submitted into evidence was a copy of the tenancy agreement, that indicated the tenant agreed to pay a liquidated damages fee of \$805.33. The tenant had initialed his acknowledgement of this term in the agreement, but stated he did not remember agreeing to the liquidated damages.

The landlord testified that this amount represents a genuine cost of re-renting a unit and submitted a calculation sheet with details as to how this amount was determined. The landlord testified that because the tenant violated the agreement by terminating the tenancy before the expiry date of the fixed term contra, the tenant is therefore liable to pay the liquidated damages.

Also in evidence is an undated, unsigned copy of a move-in and move out inspection report. The report shows charges of \$270.00 for cleaning, \$90.00 for window cover cleaning, \$55.00 and \$20.00 for repairs to light fixtures, \$2,800.00 for a projected 2-month rental loss, the \$805.33 liquidated damages under the contract and a \$200.00 charge for removal of a sofa.

The tenant testified that the copy of the move-out condition inspection report submitted into evidence by the landlord did not match the one he had signed. For this reason, I requested that the tenant fax in a copy of the move-out condition inspection report he was originally given.

The tenant testified that he agreed with the \$270.00 cleaning costs and the \$20.00 charge for a broken light fixture.

However, the tenant disagreed with the landlord's claim for loss of rent, the \$55.00 claimed as additional costs for the lights, the \$200.00 cost of removing a discarded sofa and \$90.00 to clean the window coverings.

The landlord testified that they were not able to re-rent the unit for March 2014, but did succeed in mitigating the loss by finding a tenant for April 2014 and therefore are only claiming \$1,400.00 loss of rent. The landlord did not submit any evidence to prove the re-rental date and no evidence was also provided to verify whether or not the landlord began marketing and showing the rental immediately after the tenant gave Notice on January 28, 2014.

In regard to the additional \$55.00 for the cost of the lights, the landlord was not able to provide any details nor supporting evidence.

The landlord testified that the tenant's sofa was found abandoned in the garbage area and they incurred a recycling fee of \$200.00. No receipts were submitted.

With respect to the sofa removal, the tenant testified that they did not abandon the sofa and had in fact sold it to a third party. The tenant testified that, apparently, after purchasing the sofa and removing it from the tenant's suite, the buyer was unable to fit the sofa in his vehicle and instead abandoned it near the complex's dumpster. The tenant's position is that he should not be held responsible for the actions of a third party who was the actual owner of the furniture at the time it was left on the landlord's property.

The landlord is claiming a total of \$3,590.33, minus \$1,400 that was initially claimed for loss of rent for April 2014.

### **.Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

With respect to the \$805.33 liquidated damages, I find that this is a term in the tenancy agreement that the tenant signed and the landlord is entitled to be compensated.

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In regard to the claimed \$270.00 costs for cleaning and the \$20.00 for damage to one light, I find that the tenant has conceded that the landlord should be compensated. I find that the landlord is entitled to \$290.00 for these items.

With respect to the other monetary claims for cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that the landlord submitted copies of the move-in and move-out condition inspection reports that had not been signed by the tenant and the authenticity of which has been challenged by the tenant.

I find that a move-out condition inspection report that is unsigned by the tenant does not carry sufficient evidentiary weight to support compensation. Under the Act, a condition inspection report requires input from the two parties who have entered into the tenancy agreement. In addition to the above, the landlord has not furnished any other supportive documentation such as invoices and receipts to justify the monetary charges. I find that the landlord's list of standard charges is not sufficient to prove that the claimed work was completed and paid for.

For the reasons above, I find the landlord's claims for \$55.00 additional costs for the lights, the \$200.00 cost of removing a discarded sofa and \$90.00 to clean the window coverings must be dismissed for insufficient evidence.

In regard to the landlord's claim for \$1,400.00 loss of revenue for March 2014, I find that the landlord failed to furnish sufficient proof to verify the date the unit was re-rented to the replacement tenants. I further find that the landlord neglected to submit evidentiary proof of the actual date that the landlord began to show and advertise this vacancy, which should have commenced immediately after the tenant gave Notice on January

28, 2014. Therefore, I find that the landlord's claim for loss of revenue does not sufficiently meet elements 2 and 4 of the test for damages and must be dismissed.

Based on the evidence before me, I find that the landlord has established total monetary compensation of \$1,120.33, comprised of \$805.33 liquidated damages, \$270.00 cleaning costs and \$20.00 to repair the light fixture. The award also includes half the cost of filing the application, in the amount of \$25.00.

I order that the landlord retain the \$700.00 security deposit and \$100.00 key deposit in partial satisfaction of the claim leaving a balance due to the landlord of \$320.33.

I hereby grant the landlord a monetary order for \$320.33. This order must be served on the tenant and may be filed in BC Small Claims Court to be enforced if unpaid.

The remainder of the landlord's application is dismissed without leave.

### **Conclusion**

The landlord is partly successful in the application and is granted a monetary order.

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: June 25, 2014

---

Residential Tenancy Branch

