



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 MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's representative (the landlord) testified that he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on February 18, 2014. The landlord provided copies of the Canada Post Customer Receipts containing Tracking Numbers for the registered mailing of the hearing package and the written evidence sent to the tenant on May 23, 2014. He also testified that there had been some discussion between the tenant and the landlord since the dispute resolution hearing package was sent to the tenant, reflecting the tenant's awareness of the landlord's application and notification of this hearing. In accordance with section 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on February 23, 2014, the fifth day after its registered mailing. I am also satisfied that the tenant has been deemed served with copies of the landlord's written and photographic evidence in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord submitted the only written or photographic evidence for this hearing. The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) signed by both parties on December 1, 2010 for a seven-month tenancy that was to run from January 1, 2011 until July 31, 2011. At the expiration of this initial fixed term, the tenancy converted to a periodic tenancy until the tenant vacated the rental unit on January 31, 2014. Monthly rent was set at \$1,220.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$610.00 security deposit, paid on December 1, 2010.

The landlord entered into written evidence copies of the January 1, 2011 joint move-in condition inspection report and the January 31, 2014 joint move-out condition inspection report. As part of the move-out condition inspection report, the tenant signed a Security Deposit Statement in which he agreed to the following:

I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount...

In this Statement, the following items were identified, leading to a Balance Due Landlord of \$950.00.

Item	Amount
Amount of Security Deposit	-\$610.00
Suite Cleaning	225.00
Window Cover Cleaning	135.00
Painting	500.00
Replacement of 2 Blinds	400.00
Replacement of 3 Keys	75.00
Other Blinds	170.00
Repair Walls	55.00
Total Balance Due Landlord	\$950.00

The landlord's application for a monetary award of \$1,000.00 sought the recovery of the landlord's \$50.00 filing fee in addition to the items listed above.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an

Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after January 31, 2014, the date when the tenancy ended and the forwarding address was provided to the landlord to take one of the actions outlined above. The landlord applied for dispute resolution on February 14, 2014, within this 15-day time limit.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." I find that the tenant did give his written authorization to allow the landlord to retain his full security deposit on January 31, 2014, when he signed the Security Deposit Statement as part of the signed joint move-out condition inspection report.

In addition to allowing the landlord to retain his security deposit, the Statement the tenant signed also gave the landlord his written authorization to a monetary award of \$950.00. This represented the difference between the damage the tenant admitted the landlord was entitled to recover and the amount of his security deposit. I find that this written statement is not necessarily binding with respect to the landlord's claim for damage to the same extent as was the case with the tenant's security deposit. There is no equivalent statutory provision with respect to claims for damage under section 67 of the *Act* that is similar to the provisions of section 38(4)(a) of the *Act* with respect to a landlord's right to retain a security deposit. However, a signed statement from a tenant agreeing that he was responsible for specific damage for which the landlord is to be compensated is strong written evidence of a landlord's entitlement to a monetary award for damage in its own right. The failure of the tenant to submit any written evidence or to give sworn testimony in this teleconference hearing to dispute the monetary award sought by the landlord leaves the tenant's signed statement of January 31, 2014 as the only direct evidence as to the tenant's position regarding the landlord's claim.

Based on the landlord's undisputed sworn testimony and written evidence, I find that the tenant has given the landlord his written agreement to pay the landlord an amount of \$950.00 for damage arising out of his tenancy, over and above the value of the tenant's security deposit. Under these circumstances and in accordance with section 67 of the *Act*, I issue a monetary Order in the amount of \$950.00 for damage in the landlord's favour.

As the landlord has been successful in this application and this application was necessary to satisfy the amount agreed to by the tenant, I allow the landlord to recover his filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover for damage arising out of this tenancy and for the filing fee, and to retain the tenant's security deposit:

Item	Amount
Suite Cleaning	\$225.00
Window Cover Cleaning	135.00
Painting	500.00
Replacement of 2 Blinds	400.00
Replacement of 3 Keys	75.00
Other Blinds	170.00
Repair Walls	55.00
Less Security Deposit	-610.00
Filing Fee	50.00
Total Monetary Order	\$1,000.00

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: June 05, 2014

Residential Tenancy Branch

