



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 was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on December 11, 2014 for a Monetary Order for: unpaid rent; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

An agent for the company Landlord (the “Landlord”) and the property manager appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 30 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the forwarding address provided by the Tenant on the move out Condition Inspection Report (the “CIR”) at the end of the tenancy. This was served by registered mail on December 16, 2014. The Landlord provided a copy of the Canada Post tracking number into evidence and testified that the Tenant had received and signed for the documents on December 17, 2014. Based on the undisputed evidence of the Landlord, I find that the Landlord served the Tenant in accordance with Section 89(1) (c) of the Act.

During the hearing, the Landlord withdrew her claim for the \$35.00 bank service fee charge relating to November 2014 unpaid rent and the claim for loss of rent for January 2015. The Landlord explained that she had further evidence of this portion of her claim and wanted an opportunity to use this evidence for a future claim. As a result, I find the Landlord is at liberty to re-apply for these portions of the monetary claim. The hearing continued to hear the undisputed evidence for the remainder of the Landlord’s monetary claim.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and a late rent fee for November 2014?
- Is the Landlord entitled to loss of rent for December 2014?
- Is the Landlord entitled to liquidated damages as per the tenancy agreement?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on September 1, 2014. A written tenancy agreement was signed and the Tenant paid the Landlord \$645.00 as a security deposit on August 12, 2014. The tenancy was for a fixed term of one year which was due to expire on August 31, 2015. However, the property manager testified that the Tenant verbally informed her in November 2014 that she would not be paying rent as she did not have the money and was struggling with alcohol issues which required her to move out of the rental unit.

The property manager testified that the Tenant provided no written notice to end the tenancy and vacated the rental unit on November 24, 2014. The Landlord testified that the Tenant's rent cheque for November 2014 was returned unpaid due to insufficient funds. The Landlord also testified that at the end of the tenancy, the Tenant signed the move out CIR allowing the Landlord to keep her security deposit and acknowledging that the Tenant would be responsible for the Landlord's losses for breaking the fixed term tenancy including lost rent and a liquidated damages clause.

As a result, the Landlord now claims for unpaid rent for November 2014 in the amount of \$1,290.00. The Landlord also claims for the insufficient funds fee of \$25.00 as detailed in section 10 of the tenancy agreement. The Landlord testified that as a failure of the Tenant to adhere to the fixed term tenancy agreement, the Landlord was unable to re-rent the unit for December 2014 even though they tried to re-rent the unit for that month. As a result, the Landlord now seeks to recover this loss in the amount of \$1,290.00.

The Landlord referred to Section 5 of the signed tenancy agreement subtitled "LIQUIDATED DAMAGES". This clause states the following:

"If the tenant ends the fixed term tenancy...the tenant will pay to the landlord the sum of \$805.33 as liquidated damages and not as a penalty."

[Reproduced as written]

As a result, the Landlord now seeks to also claim, **\$805.33** in liquidated damages. In total, the Landlord seeks to recover from the Tenant **\$3,410.33** (\$1,290.00 + \$1,290.00 + \$805.33 + \$25.00).

Analysis

Section 26 of the Act requires a tenant to pay rent due under a tenancy agreement. In relation to the Landlord's claim for November 2014 rent, I accept the undisputed evidence that the Tenant did not pay rent and her rent cheque for that month was returned for the reasons of insufficient funds. Therefore, as the Tenant was still in occupancy of the rental unit for a significant period of November 2014, the Tenant is liable for that month's rent in the amount of **\$1,290.00**.

Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee. The Landlord provided a copy of the tenancy agreement which provides for this fee. As the Tenant failed to pay any rent for November 2014, I find the Landlord is entitled to the **\$25.00** late rent fee claimed.

Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. In this case, I accept the Landlord's evidence that the Tenant broke the fixed term tenancy contrary to the provisions of the Act. The Tenant provided no written notice to the Landlord in November 2014 of her desire to vacate the rental unit. Therefore, I find that it would have been impossible for the Landlord to have re-rented the unit for December 2014 in such a short period of time that followed. I accept the Landlord's undisputed testimony in this respect and find the Landlord is entitled to **\$1,290.00** in lost rent for that month.

Policy Guideline 4 to the Act defines liquidated damages as:

"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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into..."

[Reproduced as written]

The Tenant signed the tenancy agreement which contained a liquidated damages clause, as detailed above. Therefore, I find the Tenant is liable to pay to the Landlord liquidated damages in the amount of **\$805.33** as required by the tenancy agreement.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$3,460.33** (\$1,290.00 + \$1,290.00 + \$805.33 + \$25.00 + \$50.00).

As the Landlord already holds \$645.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$2,815.33** (\$3,410.33 - \$645.00). This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent and ending the fixed term tenancy early causing loss of rent to the Landlord. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance in the amount of **\$2,815.33**. The Landlord withdrew the remainder of the monetary claim and is at liberty to re-apply for these amounts.

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: July 20, 2015

Residential Tenancy Branch

