



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, F.F.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for compensation under the Act and the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agents for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agents testified they served the Tenants with the Notice of Hearing and their application documents by sending them by registered mail on July 15, 2015. The Agents checked the tracking information and confirmed the Tenants had signed for this registered mail on July 16, 2015.

The Landlord also amended the application on August 12, 2015, to claim for a lesser amount of money than originally sought and to include additional evidence. They served these documents by registered mail, sent on August 12, 2015. Receipts for this mailing were included in evidence.

Despite both these mailings the Tenants did not appear at the hearing. Under section 90 of the Act the Tenants were deemed served with the documents five days after mailing. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

On January 29, 2015, the parties signed a written tenancy agreement. The tenancy began on January 26, 2015, and had an initial term of one year to January 31, 2016, following which the tenancy would continue on a month-to-month basis. The rent was \$1,365.00 per month, payable on the first day of the month, and the Tenants paid a security deposit of \$682.50 at the start of the tenancy.

During the month of March in 2015, the Tenants informed an Agent of the Landlord that they were looking for another rental unit as they could not afford the subject rental unit. On May 19, 2015, the Tenants wrote to the Landlord stating they were moving out effective in June of 2015.

The Landlord provided the Tenants with a "Breaking Lease Form", explaining that the Landlord was putting the Tenants on notice they would be responsible for certain losses due to breaking the lease early. Apparently the Tenants refused to sign this form. The Tenants did not have to sign the form, as the form was giving notice to the Tenants of their responsibilities under the tenancy agreement and under the Act and the consequences for breaching a fixed term tenancy.

The Tenants vacated the property, and the Landlord is claiming for loss of rent for the month of July 2015, in the amount of **\$1,365.00**. The Landlord's position is that the Tenants breached the Act and tenancy agreement by ending a fixed term tenancy improperly. The Landlord provided evidence that they began advertising the rental unit in March due to the discussions they had with the Tenants.

The Landlord is also requesting a fee under section 3.03 of the written tenancy agreement that requires the Tenants to pay a late payment fee of \$25.00 per month. The Landlord has provided evidence that the Tenants were late paying rent in April and May, and the Landlord claims **\$50.00** in late fees.

Under the tenancy agreement section 2.10 the Tenants agreed to pay liquidated damages of \$300.00, although the clause holds this amount is payable only if there is no loss of rental income. Nevertheless, the Landlord claims **\$300.00** in liquidated damages.

The Landlord withdrew the claim regarding payment of the hydro bill. They may bring the claim back if they so choose.

The Landlord also claims for the cost of cleaning the carpet and the blinds in the rental unit. Under the agreement the Tenants were required to clean the carpets and the window coverings and supply the Landlord with receipts showing this had been done. The Agents testified that the Tenants did not clean the carpets or window coverings. The Landlord claims \$105.00 for carpet cleaning and \$101.85 for cleaning the window coverings, for a total claim of **\$206.85** for cleaning. The Landlord has supplied copies of the receipts in evidence for this cleaning.

Lastly the Landlord claims for the filing fee for the cost of the Application.

Analysis

Based on the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants have breached section 45 of the Act by breaching a fixed term tenancy without proper authority to do so.

Under section 45 of the Act, the Tenants were not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it. For example, the Tenants might have used section 45(3) of the Act, which required them to give the Landlord a written notice of the alleged breach of a material term of the tenancy, and a reasonable amount of time to address the alleged breach of the material term of the tenancy. If the Landlord had not corrected the alleged material breach within the reasonable amount of time, then the Tenants may have given the Landlord notice they were ending the tenancy. However, there is no evidence the Tenants did this here.

Therefore, I find the Tenants breached the Act and tenancy agreement by ending a fixed term tenancy early without authority to do so.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenants breached the Act and tenancy agreement, and are entitled to monetary compensation for the losses incurred due to the breach, and for failing to clean the carpets and window coverings in rental unit.

I find the Landlord mitigated its losses by advertising the rental unit very quickly and having a new renter in place on August 1, 2015.

Therefore, I allow the Landlord one month of rent lost for July in the amount of \$1,365.00.

I allow the late fees of \$50.00 as per the tenancy agreement.

I allow the cleaning costs of \$206.85 as per the tenancy agreement.

I also allow the filing fee for the Application of \$100.00.

As to the liquidated damages clause, I dismiss this claim. I find that a close reading of this section of the agreement precludes the Landlord from claiming the liquidated damages. I interpret this clause to mean that if the Landlord has not suffered a loss of rental income then the Tenants must pay the \$300.00. The clause then goes on and is internally inconsistent as it further allows the Landlord to claim damages for loss of income as well as the liquidated damages. I find the clause is vague to the point of uncertainty and therefore, I do not award the liquidated damages.

Therefore, I find the Landlord has established a total monetary claim of **\$1,721.85** as described above.

I order that the Landlord may retain the deposit of **\$682.50** in partial satisfaction of the claim and I grant an order under section 67 for the balance due of **\$1,039.35**.

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants ended a fixed term agreement without authority to do so under the Act or tenancy agreement. The Tenants failed to clean the rental unit as they were required to under the agreement. The Landlord is entitled to one month of loss of rent, late payments fees and the cost of cleaning. The Landlord may keep the security deposit in partial satisfaction of the claim and has an order for the balance due from the Tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 25, 2015

Residential Tenancy Branch

