



Dispute Resolution Services

Page: 1

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:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act), subsequently amended and further orally amended in the hearing for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. A Monetary Order for damage and loss – Section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee - Section 72.

The landlord provided proof of registered mail service for November 25, 2015 and December 11, 2015: the original application and the subsequent amendment - including the requisite tracking numbers for both mailings. The landlord testified they sent the tenant the Notice of Hearing and all of their evidence on *both occasions* to (a) the dispute address and (b) to the forwarding address provided by the tenant on November 26, 2015. The tracking information provides that both mailings were subsequently unclaimed and returned to the sender. During the hearing the landlord testified they opened the unclaimed mail confirming they both contained the notice of Hearing package.

I accept the landlord's evidence that despite the tenant having been served with the application and amended application for Dispute Resolution and Notice of Hearing by *registered mail* in accordance with Section 89 of the *Residential Tenancy Act* (the Act) the tenant did not participate in the conference call hearing. The landlord was permitted to be heard, to present evidence, and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started July 01, 2015 as a fixed term tenancy to June 30, 2016. The tenancy ended when the tenant vacated November 26, 2015. Rent in the amount of \$1370.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$685.00, which the landlord retains in trust.

The landlord's evidence is that the tenant gave the landlord Notice they were vacating in late October 2015. The tenant failed to pay rent in the month of November 2015 and on November 09, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it on their door. The tenant did not pay the rent within the prescribed time to do so.

The parties conducted a mutual condition inspection on November 26, 2015. The landlord provided a copy of the inspection report in which the landlord identified the drapes of the rental unit as "dirty". The landlord claims cleaning costs for the drapes in the amount of \$101.00. The landlord did not provide a receipt for the drapery cleaning and argued that by their signature on the condition inspection report the tenant agreed the report fairly represented the condition of the rental unit and the charges for the drapery cleaning.

The landlord provided evidence of their efforts to re-rent the unit as soon as it became available, and was successful in re-renting the unit for January 2016. The landlord testified the tenant satisfied the rent charges for November 2015 on December 07, 2015.

The landlord's outstanding claim is for loss of revenue for December 2015 in the amount of \$1370.00, and *liquidated damages* pursuant to the terms of the fixed term lease. The landlord provided a copy of the tenancy agreement indicating the tenant's agreement to pay the landlord the pre-estimate of \$300.00 for administrative costs to re-rent the unit if the tenant breached the fixed term of the agreement.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Based on the undisputed evidence of the landlord, I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. However, a landlord's claim for loss of revenue following the end of the tenancy is subject to the landlord's statutory duty pursuant to **Section 7(2)** of the Act to do whatever is reasonable to minimize the damage or loss. I find that the landlord took reasonable steps to minimize the loss in this situation and was able to re-rent the unit for January 2016 thereby stemming further losses for which the tenant could be responsible. I find the landlord is entitled to loss of revenue for December 2015 in the amount of **\$1370.00**. Unlike late payments of rent, loss of revenue compensation is not subject to administrative charges for late payment of rent. Therefore the landlord's claim for a late payment of rent charge for December 2015 is denied.

I find the landlord's monetary claim for liquidated damages to offset administrative costs is not extravagant and on balance of probabilities the tenancy agreement clause represents a genuine pre-estimate of costs to re-rent the unit. As a result, I allow the landlords' claim for liquidated damages in the amount of **\$300.00**.

I accept the landlord's argument the tenant agreed the landlord should be compensated for cleaning the drapes of the rental unit in the amount of **\$101.00**. I find the landlord has provided sufficient evidence in support of this claim, despite the absence of a receipt for the drapery cleaning. The landlord is granted the amount.

The landlord is further entitled to recovery of the \$50.00 filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Loss of revenue for December 2015	\$1370.00
Liquidated Damages pursuant to tenancy agreement	\$300.00
Drapery cleaning	\$101.00
Filing Fee	\$50.00
<i>Less Security Deposit</i>	<i>-\$685.00</i>
Total Monetary Award to landlord	\$1136.00

Conclusion

I **Order** that the landlord retain the security deposit of \$685.00 in partial satisfaction of the claim and I grant the landlord a **Monetary Order** under Section 67 of the Act for the balance due of **\$1136.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 21, 2016

Residential Tenancy Branch

