



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 OPN MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities and based on a tenant's Notice to End Tenancy, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Three agents for the landlord (the "agents") attended the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agents testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on November 18, 2015 to the mailing address provided by the tenant on the condition inspection report dated October 31, 2015. A tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail customer receipt was also submitted in evidence. According to the online registered mail tracking website the registered mail package was returned to the sender and was not picked up by the tenant.

Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find that the tenant was deemed served on November 23, 2015 with the Notice of Hearing, Application and documentary evidence, which is five days after the registered mail package was mailed on November 18, 2015.

Preliminary and Procedural Matters

At the outset of the hearing, the agents requested to withdraw the landlord's request for an order of possession as the tenant had vacated the rental unit on October 31, 2015 since the landlord filed their Application. As a result, I have not considered the landlord's original request for an order of possession as it is no longer required.

Also at the outset of the hearing, the agents request to reduce their monetary claim from the original amount of \$4,817.25 to \$1,891.05 which will be described further below. I find that a reduction in the landlord's monetary claim does not prejudice the tenant and is permitted as a result pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement and parking agreement was submitted in evidence. The fixed term tenancy began on June 1, 2015 and was scheduled to revert to a month to month tenancy after May 31, 2016. The tenant's monthly rent was \$1,415.00 and was due on the first day of each month. The tenant paid a security deposit of \$707.50 at the start of the tenancy, which the landlord continues to hold. The agents also stated that the tenant paid a key deposit of \$25.00 at the start of the tenancy, which they continue to hold.

The landlord's reduced monetary claim of \$1,891.05 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent for November 2015	\$1,415.00
2. Liquidated damages	\$300.00
3. Carpet cleaning	\$70.00
4. Drape cleaning	\$106.05
TOTAL	\$1,891.05

Regarding item 1, the agents testified that the landlord is seeking \$1,415.00 for loss of November 2015 rent as the tenants vacated the rental unit on October 31, 2015, after providing a letter dated two days earlier on October 29, 2015 giving 7 reasons why they were leaving. The agents stated that the tenancy was a fixed term tenancy until May 31, 2016 at which time the tenancy agreement would revert to a month to month agreement. The agents stated that the tenant breached the tenancy agreement and Act by vacating on October 31, 2015.

Regarding item 2, the agents presented section 2.10(b) of the tenancy agreement which indicates a \$300.00 amount for liquidated damages would be charged to cover administration costs of re-renting the rental unit and that such a term does not preclude the landlord from also seeking loss of rental income due to the tenant's breach of the terms of the tenancy agreement. The tenancy agreement was signed by the parties.

Regarding item 3, the landlord is seeking reimbursement for carpet cleaning costs in the amount of \$70.00. The agents testified that the tenant failed to clean the carpets before vacating the rental unit. The invoice submitted in evidence is in the amount of \$70.00 and is dated November 18, 2015 and matches the address of the rental unit.

Regarding item 4, the landlord has claimed \$106.05 for drape cleaning and included an invoice for the same amount in support of this portion of their claim that matched the rental unit address. The agents testified that the tenants failed to clean the blinds before vacating the rental unit.

Analysis

Based on the undisputed documentary evidence of the landlord and the undisputed testimony of the agents provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was deemed served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, and taking into account the condition inspection report, invoices and undisputed testimony I find the landlord's application is fully successful in the amount of **\$1,891.05**. As the landlord's application is successful, I grant the landlord the recovery of the filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$707.50 which has not accrued any interest to date. The landlord also continues to hold the tenant's key deposit of \$25.00 and that the tenant returned the key.

I authorize the landlord to retain the tenant's full security deposit of \$707.50 in partial satisfaction of the landlord's monetary claim. I also deduct the \$25.00 key deposit from the landlord's claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,208.55**. This amount is comprised of \$1,891.05, plus the \$50.00 filing fee, less the \$707.50 security deposit, less the \$25.00 key deposit.

Conclusion

The landlord's application is successful.

The landlord has been authorized to retain the tenant's full security deposit of \$707.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,208.55 as described above. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: June 30, 2016

Residential Tenancy Branch