



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 OPN, MND, MNR, MNSD, MNDC, FF

Introduction

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

- an order of possession for tenant's notice pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1345 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent HA (the agent) testified that the landlord served the tenant with the dispute resolution package on 17 March 2016 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Scope of Application

At the hearing the agent HA (the agent) confirmed that the tenant vacated the rental unit 28 February 2016. The agent HA asked to withdraw the landlord's claim for an order of

possession as it was unnecessary. As there is no prejudice to the tenant in withdrawing this claim, this portion of the landlord's claim is withdrawn.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses 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

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 1996. The tenant vacated the rental unit on 29 February 2016. The most recent monthly rent was \$1,208.00 and was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$367.50, which was collected at the beginning of the tenancy.

On 26 February 2016, the tenant provided her notice to end tenancy to the landlord. The notice set out that she intended to vacate the rental unit on 29 February 2016.

The agent testified that the rental unit was advertised immediately. The witness testified that she conducted a showing in the first week of March, but ultimately the landlord was unable to secure a new tenancy until 1 May 2016. The witness testified that the tenant had painted the rental unit a different colour, which required repainting.

Analysis

Subsection 45(1) of the Act sets out how a tenant may end a tenancy:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

This means that, for a notice given 26 February 2016, the earliest date the tenant could terminate her obligations under tenancy agreement was 31 March 2016. By failing to provide notice in accordance with the Act, the tenant breached section 45 of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the evidence before me, I find that the tenant's breach of section 45 of the Act, delayed the landlord's ability to organize contractors and seek new tenants. I find that as a result of this delay, the landlord incurred a rental loss for March. I find that this loss is equivalent to the rent the landlord would have otherwise received from the tenant had she remained in the rental unit for March: \$1,208.00.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. \$58.90 in interest is payable over this period.

As the landlord has been successful in this application, it is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$881.60 under the following terms:

Item	Amount
March Rent Loss	\$1,208.00
Offset Security Deposit Amount	-367.50
Offset Interest on Deposit	-58.90
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$881.60

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 13, 2016

Residential Tenancy Branch