



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 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 landlord's agents attended. The tenant appeared. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant served his evidence late. The landlord's agents informed me that they had an opportunity to review this evidence. As the landlord's agents had time to review the late evidence, I admitted the tenant's late-served evidence. Other than the late evidence, no other issues of service were raised by the parties.

Scope of Application

The parties agree that the tenant vacated the rental unit on or about 30 November 2015. As possession of the rental unit has returned to the landlord, there is no need for me to consider the landlord's application for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage, and losses arising out of this tenancy? Is the landlord entitled to a monetary award for loss 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 February 2015 and ended 30 November 2015. Monthly rent in the amount of \$1,405.00 was due on the first of the month. The landlord continues to hold the tenant's security deposit in the amount of \$702.50 and an additional deposit in the amount of \$100.00 for access to the parking area.

The landlord claims for \$2,504.18:

Item	Amount
December Rent Loss	\$1,405.00
January Rent Loss	634.48
Liquidated Damages	300.00
Cleaning	109.20
Light Bulb	5.50
Filing Fee	50.00
Total Monetary Order Sought	\$2,504.18

Testimony of Agent CW

The agent CW testified that the tenant reported bedbug activity on or about 6 August 2016. The agent CW testified that the landlord initiated pest control treatment on 10 August 2015. The agent CW testified that the landlord sprayed again on 26 August 2016. There was no live bedbug activity observed at that time.

On 11 September 2015 live activity was observed in the rental unit. The landlord's agent sent a letter advising of the activity. The rental unit was treated again.

The agent CW testified that no pest activity was observed in the rental unit for the period 2 October 2015 to 30 October 2015.

The agent CW testified that the tenant provided notice to end the tenancy on 30 October 2015. CW testified that new tenants were secured for the rental unit starting 15 January 2016.

The agent CW testified that at the time the tenant vacated the rental unit there was no live activity present.

CW testified that the tenant was provided with the option of cleaning the drapes himself.

Testimony of Agent HA

HA testified that he received the tenant's letter dated 31 August 2015. HA testified that in response to this letter, he authored the letter dated 3 September 2015.

HA testified that none of the landlord's agents would have denied bedbugs. The most the agents would have said was that there was no current activity. HA testified that the landlord and its agents did their best to remedy the bedbug issue.

HA testified that the landlord has a contract with a pest control company that completes preventative work.

Testimony of Agent SE

The agent SE testified that as soon as the tenant provided notice, the landlord began marketing the rental unit. The landlord provided copies of internet advertisements that were printed on 13 January 2016. The postings show that they were posted up to two months prior to the print date. The agent SE testified that the landlord also posted the rental unit to other websites. SE testified that if there were any viable tenants, the landlord would have rented the unit sooner.

The agent SE testified that there are no recorded issues with bedbugs for several years prior to the tenancy beginning.

The agent SE testified that the tenant had given another notice to vacate in June 2015 that made no mention of bedbugs.

Testimony of the Tenant

The tenant testified that he sought a negotiated end to the tenancy. The tenant testified that his wife suffers from trauma related to bedbugs and mice.

The tenant testified that the landlord's agent told him that the rental unit did not have bedbugs. The tenant testified that the pest control person stated that he had attended multiple pest related calls at the residential property. The tenant testified that an internet site states that the residential property has had issues with bedbugs and cockroaches since 2011.

The tenant testified that he placed an advertisement online and had responses. The tenant testified that he had his daughter telephone the landlord on 27 November 2015 and was told that there were no vacancies in the residential property.

The tenant testified that he told the landlord that there were people interested in renting the rental unit, but that the landlord did not respond. The tenant did not provide copies of this communication.

Documents

I was provided with the tenancy agreement dated 1 December 2014 for a tenancy beginning 1 February 2015. The tenancy agreement sets out that the tenancy is for an initial fixed term of one year ending 31 January 2016. Clause 10(b) of the tenancy agreement sets out the provision of the liquidated damages term:

If Tenant unilaterally elects to vacate the Premises before the expiration of the term described in section 1.01 of this Agreement and Landlord does not elect to treat this agreement as being at an end. Tenant acknowledges and agrees that s/he shall continue to be responsible for the payment of the rent payable under this Agreement until the earlier of:

*(i) the expiration of the term as described in section 1.01 of this Agreement;
or*

*(ii) the re-letting of the Premises by Landlord;
at which time the tenancy shall be at an end. Should the Premises be immediately re-let, so that no rental income is lost, liquidated damages of \$300.00 shall be charged to recover administration costs of re-letting the Premises. Landlord and Tenant acknowledge and agree that the payment of the said damage shall not preclude Landlord from exercising any further right of pursuant another remedy available in law or in equity, including, but not limited*

to, damages to the Premises and damages as a result of loss of rental income due to the Tenant's breach of the terms of this Agreement.

I was provided with a letter dated 31 August 2015 from the tenant to the landlord. In that letter the tenant alleges that he was told the building was bedbug free and that this induced him to enter into the tenancy agreement. The tenant alleges that this was false and the residential property has had extensive issues with bedbugs. The tenant requests to vacate the rental unit as at 30 September 2015 without liability.

The following notices and reports document the various bedbug treatments:

- I was provided with a notice dated 6 August 2015 indicating that the landlord would enter the suite 10 August 2015 for the purpose of pest control treatment.
- I was provided with a technician report for the treatment 10 August 2015. Live bedbug activity was noted on the bed.
- I was provided with a notice dated 20 August 2015 indicating that the landlord would enter the suite 26 August 2015 for the purpose of a follow up treatment.
- I was provided with a technician report for the treatment on 26 August 2015. The report notes no live activity.
- I was provided with a notice dated 9 September 2015 indicating that the landlord would enter the suite 11 September 2015 for the purpose of pest control treatment.
- I was provided with a technician report for the treatment on 11 September 2015. The report notes live activity.
- I was provided with a notice dated 22 September 2015 indicating that the landlord would enter the suite 28 September 2015 for the purpose of a follow up treatment. This date was later changed to 2 October 2015.
- I was provided with a technician report for the treatment on 2 October 2015. The report notes no live activity.
- I was provided with a notice dated 14 October 2015 indicating that the landlord would enter the rental unit on 16 October 2015 to conduct a follow up inspection. No live activity was observed on that inspection.
- I was provided with a notice dated 26 October 2015 indicating that the landlord would enter the rental unit on 30 October 2015 to conduct a follow up inspection. No live activity was observed on that inspection.

The landlord provided me with an invoice dated 2 December for drapes cleaning. The total cost of the drapes cleaning was \$109.20.

The landlord provided me with three printouts of the landlord's internet posting. The postings were printed on 13 January 2016. The postings indicate that they were posted on or about 13 November 2015, 13 December 2015 and 1 January 2016.

The landlord provided guest registration forms indicating that they conducted various showings of the rental unit.

I was provided with the tenant's notice to end tenancy dated 30 October 2015 effective 30 November 2015. The note sets out that the tenant was ending the tenancy for "health reasons".

The tenant submitted a note from his wife's treating physician. That letter set out that the tenant's spouse reported anxiety related to bedbugs.

The tenant submitted a written statement from his stepdaughter. That statement set out that she contacted the landlord and was told that there were no vacancies.

The tenant provided email responses to his internet posting.

I was provided with a copy of the condition inspection report for this tenancy. The report notes a burned out lightbulb and that the drapes were dirty. The report notes the cost of the bulb is \$5.50.

Analysis

The parties entered into a fixed-term tenancy agreement with a term ending 31 January 2016. The tenant provided his notice on 30 October 2015. At that time, the landlord's evidence shows that there was no bedbug activity.

Pursuant to subsection 45(2) of the Act, a tenant may not end a fixed-term tenancy prior to the end of a term by giving notice.

Subsection 45(3) of the Act permits a tenant to for breach of a material term:

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant suggests that the landlord's agent represented that the residential property was bedbug free. There is no term in the tenancy agreement that warrants that the rental unit or residential property was bedbug free. Even if I were to find that the representation was a term of the tenancy agreement, and even if I were to find that the term was a material term of the tenancy agreement, at the time the tenant delivered the notice to end tenancy, the landlord had remedied the pest issue. As such, the tenant was not able to deliver a notice to end tenancy as the issues were fixed. As such, the tenant was not able to terminate the fixed-term tenancy early and was liable to the landlord for rental loss under that agreement.

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, regulations or a tenancy agreement, 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.

The landlord has provided evidence that the rental unit was not rerented until 15 January 2016. I find that the landlord has established a rental loss for the period 1 December 2015 to 14 January 2016. This loss was the direct result of the tenant breaching his fixed-term tenancy agreement.

The tenant submits that the landlord failed to mitigate its loss. The tenant provided various responses to a web advertisement he posted in support of this contention. The agents testified as to various efforts that have been made on the landlord's behalf to rerent the rental unit. On balance, I prefer the evidence of the landlord. The tenant did not provide emails showing that he forwarded any prospective tenants to the landlord. The landlord's provided printouts of the web advertisements that were posted on or about 13 November 2015. On the basis of the landlord's evidence, I find that the landlord has proven it has mitigated its loss. As such, the landlord is entitled to the full amount of its proven loss: \$1,405.00 for December and \$634.48 for January.

The landlord claims for liquated damages under the tenancy agreement. The relevant portion of the tenancy agreement sets out, in part:

Should the Premises be immediately re-let, so that no rental income is lost, liquidated damages of \$300.00 shall be charged to recover administration costs of re-letting the Premises....

A plain reading of this term indicates that liquidated damages would only be charged in the event that the landlord has no claim for a rental loss. This term is then directly contradicted by the next sentence:

Landlord and Tenant acknowledge and agree that the payment of the said damage shall not preclude Landlord from exercising any further right of pursuant another remedy available in law or in equity, including, but not limited to, damages to the Premises and damages as a result of loss of rental income.

[emphasis added]

The tenancy agreement was prepared by the landlord. *Contra proferentem* is a doctrine of contractual interpretation that establishes that terms that are ambiguous should be interpreted in the favour of the non-drafting party. In this case, this means that the ambiguity should be resolved in favour of the tenant. On this basis, I interpret that the liquidated damages clause only applies where the landlord had not claimed for a rental loss. As the landlord has claimed for a rental loss, the landlord is not entitled to liquidated damages under the tenancy agreement. This portion of the landlord's claim is dismissed.

The landlord claims for the cost of a burnt out lightbulb and drapes cleaning.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, 1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the tenant's responsibilities:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

Guideline 1 sets out the cleaning requirement for drapes:

3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

Guideline 1 sets out the expectation with respect to lightbulbs:

2. The tenant is responsible for:
 - Replacing light bulbs in his or her premises during the tenancy,...

The landlord provided evidence that the tenant did not adequately clean the drapes and did not replace one lightbulb. The tenant did not dispute this. I find that the tenant

failed to comply with section 37 of the Act by not adequately cleaning the drapes and leaving a burnt out lightbulb. By failing to comply with subsection 37 of the Act, the tenant caused the landlord loss.

The landlord provided a receipt substantiating the amount of the drape cleaning in the amount of \$109.20. I find that the landlord is entitled to recover the full amount of this cost from the tenant. I accept that \$5.50 represents the landlord's cost of replacing the lightbulb. I find that the landlord is entitled to recover the full amount of this cost.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,401.68 under the following terms:

Item	Amount
December Rent Loss	\$1,405.00
January Rent Loss	634.48
Cleaning	109.20
Light Bulb	5.50
Filing Fee	50.00
Offset Deposits	-802.50
Total Monetary Order	\$1,401.68

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: August 08, 2016

Residential Tenancy Branch