



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND 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 a monetary order for unpaid rent or utilities, for damages to the unit, site or property, 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.

An agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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 agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on January 20, 2016 to the tenant's forwarding address provided in writing by the tenant. The landlord submitted in evidence a copy of the registered mail receipt with tracking number. The tracking number has been included on the cover page of this Decision for ease of reference. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. The online registered mail tracking website information indicates that the registered mail package was marked as "unclaimed" and returned to the sender. Based on the above, and without any evidence to prove to the contrary, I accept that the tenant was deemed served on January 25, 2016, with the Notice of Hearing, Application and documentary evidence pursuant to section 90 of the *Act*. I note that refusal or neglect to pick up a registered mail package is not a ground for a Review Consideration under 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 was submitted in evidence. A fixed term tenancy began on October 1, 2015 and was scheduled to revert to a month to month tenancy after March 31, 2016. Monthly rent of \$750.00 was due on the first day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold. The tenant vacated the rental unit on January 4, 2016.

The landlord's monetary claim for \$667.71 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Liquidated damages	\$300.00
2. Carpet cleaning	\$110.00
3. Suite cleaning	\$50.00
4. Loss of January 1-9, 2016 rent (calculated at \$750.00 monthly rent divided by 31 days = \$24.19 per day multiplied by 9 days)	\$217.71
Subtotal	\$677.71
5. <i>Less \$10.00 credit on the tenant's account</i>	<i>-\$10.00</i>
TOTAL	\$667.71

Regarding item 1, the agent presented Appendix A of the tenancy agreement which covers the liquidated damages clause of the tenancy agreement. The amount of \$300.00 is listed on the liquidated damages clause and it is initialed by the tenant.

Regarding item 2, the agent presented a receipt in the amount of \$110.00 for carpet cleaning and a copy of the condition inspection report which indicates that the rental unit carpets were dirty at the end of the tenancy.

Regarding item 3, the agent testified that the caretaker performed 2.5 hours of general suite cleaning due to the dirty condition of the rental unit and that the labour amount charged is \$20.00 per hour for a total of \$50.00. The condition inspection report was provided in support of this portion of the landlord's claim which indicates that the rental unit was dirty at the end of the tenancy.

Regarding item 4, the landlord has claimed \$217.71 for loss of January 1 to 9, 2016 rent inclusive due to the tenant failing to vacate the rental unit on December 31, 2015 having served a notice to end tenancy document submitted in evidence. According to the tenant's notice to end tenancy, the tenant served a notice to end tenancy dated December 17, 2015 with an effective vacancy date of December 31, 2015 which the agent stated is not an approved method of ending a fixed term tenancy. The tenant did not vacate the rental unit until January 4, 2016 and the landlord complied with section 7 of the *Act* by immediately advertising the rental unit and

was successful in finding new tenants who moved into the rental unit effective January 10, 2016. This portion of the landlord's claim is for the loss of rent for the first nine days of January 2016.

Regarding item 5, the agent testified that they would apply a \$10.00 credit to their claim as the tenant had a credit of \$10.00 listed on this tenant account. As a result, any monetary amount owing to the landlord will be deducted by \$10.00 accordingly.

Analysis

Based on the landlord's undisputed documentary evidence and undisputed testimony of the agent 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, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and are all reasonable. I also find the tenant breached section 45 of the *Act* which states in part:

Section 45 of the *Act* states:

45 (2) A tenant may end a fixed term 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 the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[my emphasis added]

The tenant breached section 45 of the *Act* by serving a notice to end tenancy before the end of the fixed term tenancy.

Given the above, I find the landlord has proven their claim for items 1-4 inclusive and are entitled to a monetary amount of \$677.71 which will be deducted by \$10.00 to account for the credit to the tenant as indicated in item 5 above to \$667.71. As the landlord's application was successful, I grant the landlord the recovery of the cost of the filing fee in the amount of

\$100.00. Therefore, the landlord's net monetary award is **\$767.71.** The landlord continues to hold the tenant's security deposit of \$375.00 which has not accrued any interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the landlord's monetary 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 **\$392.71.**

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of \$375.00 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 \$392.71. 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: September 26, 2016

Residential Tenancy Branch