



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, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based upon a tenant's notice to end tenancy; a Monetary Order for damage, unpaid rent or utilities, damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I determined that the tenant had already vacated the rental unit at the time this application was filed. Accordingly, an Order of Possession was not required and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claim only.

At the outset of the hearing, I confirmed that the landlord had served its application and the same evidence package that had been submitted to the Residential Tenancy Branch upon the tenant via registered mail sent on September 22, 2016.

The landlord sought to amend the monetary claim during the hearing. I was willing to consider the amendment because the landlord indicated that the claim was being reduced. However, as the hearing progressed the landlord indicated that the amended amounts took into account depreciation of replaced items and I noted that the landlord had not provided any receipts or invoices or calculations to support the amounts claimed. The tenant confirmed that he did not have any receipts or invoices in the evidence package served upon him.

The landlord requested that verbal testimony be sufficient evidence as to the amounts claimed or that the hearing be adjourned so that additional evidence may be submitted. The tenant responded by stating he was not comfortable accepting the landlord's verbal testimony as evidence of the landlord's losses. I was of the view that the tenant's position was reasonable.

I also informed the landlord that I would not permit an adjournment considering the landlord had filed its application six months prior to this hearing and did not submit further evidence or an Amendment despite having such an opportunity to do so up to 14 days before the hearing as

permitted under the Rules of Procedure. Accordingly, I was of the view the landlord's request for adjournment was the result of the landlord's neglect in ensuring sufficient documentation to support the claims had been submitted and served.

The landlord requested the application be withdrawn with liberty to reapply. The landlord confirmed that the landlord was still holding a security deposit of \$597.50 and a gate card deposit of \$50.00 even though the gate card had been returned. I informed the parties that if I were to permit a withdrawal, and grant leave to reapply, I would order return of the security deposit and gate card deposit to the tenant. The tenant did not object to the landlord's request for withdrawal, with liberty to reapply, since the deposits were being ordered returned.

In light of the above, I have recorded this application as being withdrawn and I grant the landlord leave to reapply.

As provided under Residential Tenancy Branch Policy Guideline 17: *Security Deposit and Set – Off*, where a landlord applies for authorization to retain a security deposit and the landlord's application is dismissed, the Arbitrator will order return of the deposit to the tenant. Although the landlord has been given leave to reapply, there is no obligation for the landlord to reapply. Accordingly, in keeping with policy guideline 17, I order the landlord to return the security deposit and gate card deposit to the tenant in the sum of \$647.50. The tenant is provided a Monetary Order in the amount of \$647.50 to serve and enforce upon the landlord as necessary.

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: March 15, 2017

Residential Tenancy Branch