



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, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- an Order of Possession after the tenant had given notice to vacate the rental unit;
- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. Another agent of the landlord company attended the hearing as an observer, who gave closing submissions, with the consent of the tenant, and did not otherwise partake in the hearing. The parties were given the opportunity to question each other and the witness.

At the commencement of the hearing, the parties agreed that the tenant has vacated the rental unit, and the landlord's agent withdrew the application for an Order of Possession.

During the course of the hearing, the tenant advised that she had provided evidentiary material to the Residential Tenancy Branch and to the landlord by facsimile, however none of that evidence has been received by me, and the landlord's agent advised that it has not been received by the landlord. The Rules of Procedure require that any evidence that a party wishes to rely on must be exchanged well in advance of the

hearing. Since the landlord has not received it, I declined to allow the tenant to provide it to me after the hearing had commenced.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for administrative costs for ending the fixed-term tenancy early?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 9, 2015 and was to expire on December 31, 2016, thereafter reverting to a month-to-month tenancy. However, the tenant actually vacated the rental unit on August 31, 2016. Rent in the amount of \$1,870.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$935.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within an apartment complex, and a copy of the tenancy agreement has been provided.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$872.67 for pro-rated rent for September, 2016;
- \$300.00 for liquidated damages; and
- \$37.47 for a hydro bill.

The landlord's agent further testified that the tenant has paid the hydro bill and the landlord withdraws that claim.

On August 3, 2016 the tenant gave notice to end the tenancy effective August 31, 2016. The letter was dated August 1, 2016 but was not received until August 3. August 1 was a Friday and the landlord's agent checked the landlord's mailbox first thing in the morning and not again until August 3. The landlord's agent prepared a form entitled "Breaking Lease," a copy of which has been provided but the tenant refused to sign it. The landlord was able to re-rent the rental unit effective September 15, 2016 and claim a pro-rated amount of rent for 14 days totalling \$872.67.

The tenancy agreement provides for liquidated damages in the amount of \$300.00 and the landlord claims that amount as against the tenant.

A move-in and a move-out condition inspection report had been completed, and the tenant provided a forwarding address in writing on the move-out portion on August 31, 2016.

The landlord's witness is the property manager and testified that the tenant was offered another rental unit, but the witness declined the tenant's request for moving expenses. The witness had inspected the rental unit on at least one occasion with the tenant and didn't feel it was excessively hot even though the witness was wearing a suite and tie. However, due to the placement of the thermostat behind the kitchen, the witness thought the temperature registered on the thermometer might be affected so the witness told the tenant that the numbers on the thermostat should be ignored.

The tenant testified that she had asked numerous times about faulty heat in order to keep it at a reasonable temperature but there seemed to be no way to control it. In May, the tenant contacted the building manager because the tenant had to keep 4 fans running. In January the tenant asked again telling the property manager that the tenant cannot sleep due to the heat. The heat at January 6 at 1:19 a.m. was 78 degrees, and was over 80 degrees on each of April 24, May 19, Jun 29, July 11th, August 10 and February 18. The tenant talked to the landlord on numerous occasions, and heat registers had been disconnected. In January or February the tenant was advised that hot water heat pipes ran under the rental unit, which the tenant didn't know at move-in. The only option from the landlord was in June or July, 2016 to move the tenant to another unit, but the tenant did not get any answer as to whether or not the landlord would pay for the move.

The tenant felt justified in breaking the tenancy and denies the landlord's claims for pro-rated rent and liquidated damages.

Landlord's Closing Submissions:

The rental unit was at a reasonable temperature when the property manager was in it, and neither the landlord's agents nor the contractor found that it was too hot. The tenant was offered another rental unit, but broke the lease, gave late notice to vacate, and the landlord did what the landlord could do to mitigate any loss by re-renting within a short period of time. The landlord is entitled to the costs incurred and the liquidated damages contained in the tenancy agreement.

Tenant's Closing Submissions:

The tenant stayed as long as she could to honour the lease and wanted to enjoy staying at the rental unit. The tenant spoke to the landlord's agent several times, who went to the property manager about moving costs, but the tenant never heard back about it. The tenant could not stay; it was more than she could deal with and just wants the security deposit returned.

With respect to late notice to end the tenancy, the tenant read the tenancy agreement wrong and believed the notice had to be dated the 1st of the month.

Analysis

I accept that the tenant disputes the landlord's claim because the tenant felt justified in ending the tenancy. However, the *Residential Tenancy Act* contains sections that permit a tenant to make an application for dispute resolution for relief which can include and order for repairs or a reduction in rent for the landlord's failure to make repairs, or other such applications, but none include ending the tenancy earlier than the fixed term.

I am also satisfied that the landlord re-rented the rental unit, mitigating any further loss the landlord may have suffered, and the landlord has established the claim for a partial month of rent, or \$872.07. I have also read the tenancy agreement which clearly shows that the tenant agreed to liquidated damages of \$300.00 if the tenant ended the tenancy earlier than the fixed term. The tenant moved out earlier than the fixed term, and the landlord has established the \$300.00 claim.

The landlord filed the application for dispute resolution on September 14, 2016, and I am satisfied that the landlord has made the application claiming against the security deposit within the 15 days required by the *Act*.

The landlord has not led any evidence with respect to damage to the unit, site or property and I dismiss that portion of the claim.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$935.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$337.67.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is withdrawn.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the \$935.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$337.67.

This order is final and binding and may be enforced.

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 29, 2017

Residential Tenancy Branch