



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, MNR, MNDC, MNSD, FF

Introduction

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

- an order of possession as the tenant has provided written notice to end the tenancy pursuant to section 55;
- a monetary order for unpaid rent 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided affirmed testimony that the tenant was served with the notice of hearing package via Canada Post Registered Mail to the tenant's forwarding address in writing on March 3, 2017 and the submitted documentary evidence again on July 4, 2017. The landlord clarified that the tenant had provided his forwarding address in writing as part of the condition inspection report for the move-out on February 14, 2017, but had refused to complete the report by signing it as he had disputed the landlord's claims. The landlord stated that the notice of hearing package was returned by Canada Post as "unclaimed" and the documentary evidence is in the process of being returned by Canada Post to the sender as "unclaimed" by the tenant. The landlord's noted Canada Post Customer Receipt Tracking numbers are noted on the cover sheet of this decision. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89. Although the tenant did not claim both packages, I am satisfied that the tenant has been sufficiently served as per section 90 of the Act.

Preliminary Issue

At the outset, the landlord clarified the request for an order of possession (OPN) as a result of the tenant giving written notice to end the tenancy. At the outset the landlord clarified that an order of possession was not required as the tenant had vacated the rental premises. As such, this section of the landlord's application is cancelled as it was made in error.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on October 15, 2015 on a fixed term tenancy ending on October 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement signed and dated October 7, 2015. The monthly rent began as \$1,365.00 and was payable on the 1st day of each month. As a result of a notice of rent increase dated August 26, 2016 the rent was increased to \$1,395.00 on December 1, 2016. A security deposit of \$682.50 was paid on October 7, 2015 and a condition inspection report for the move-in was completed by both parties on October 15, 2015.

The landlord seeks an amended monetary claim of \$3,533.59 which consists of:

\$10.00	February 2017, Rental Arrears
\$1,395.00	March 2017, Loss of Rental Income
\$1,058.13	Replace Carpet
\$101.00	Drape Cleaning
\$5.50	Replace bathroom lightbulb
\$296.96	Replace Kitchen Counter
\$261.00	General Cleaning
\$200.00	Drywall Repair
\$56.00	Laundry Card, not returned
\$150.00	Garbage Removal

The landlord claims that the tenant failed to provide proper 1 months' notice to end the tenancy by vacating the rental unit on February 14, 2017. The landlord provided undisputed testimony that the tenant had started to provide notice to end the tenancy on February 6, 2017, but had failed to sign and complete the "late notice form" as the tenant had disagreed with the conditions on the form. The landlord also claims that the tenant had left the rental unit dirty and damaged requiring cleaning and repairs. The landlord also stated that upon realizing that the tenant was vacating the rental unit, the landlord immediately advertised the space for rent, but was not successful in re-renting the unit until May 1, 2017.

In support of this claim the landlord has provided:

- Copies of 38 photographs depicting the condition of the rental unit at the end of tenancy
- Copy of the completed condition inspection report for the move-in, dated October 15, 2015
- Copy of the incomplete condition inspection report for the move-out, refused by the tenant.
- Copies of 3 invoices, previous, current and alternate for replacement comparison of floors from carpet to laminate.
- Detailed calculation of amortized carpet replacement cost
- Copy of invoice, install of new kitchen countertop
- Copy of signed and dated tenancy agreement
- Copy of returned key(s) form dated February 14, 2017
- Detailed calculation of amortized countertop replacement cost
- Copy of detailed "Cleaning/Replacement Charges" form initialed by tenant
- Copy of Notice of Rent Increase form dated August 26, 2016

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to

prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has established a claim for the amount sought as \$3,533.59 as claimed. The landlord has provided undisputed evidence that the tenant failed to provide proper notice ending the tenancy and had left the rental unit dirty and damaged as shown by the landlord's evidence.

The landlord is also entitled to recovery of the \$100.00 filing fee.

I order that the landlord may retain the \$682.50 security deposit currently held in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$2,951.09.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 01, 2017

Residential Tenancy Branch