



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, MNSD, MNR, MNDC, MND, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant, an Order of Possession, authority to retain the security deposit, and to recover the filing fee.

The hearing was conducted by teleconference on August 17, 2017. Only the Landlord's representatives called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's agent, D.D. testified that they served the Tenant with the Notice of Hearing and the Application on March 22, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. D.D. testified that the package was returned to the Landlord on April 11, 2017 marked as unclaimed.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of March 27, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

By Decision made March 15, 2017 Arbitrator Reid found that an Order of Possession was not required as the Tenant has already vacated the rental unit. Further Arbitrator Reid ordered that the security deposit be returned to the Tenant. Accordingly, the Landlord's representatives confirmed they no longer sought that relief and I record those claims as being withdrawn.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent, damage to the rental unit and losses incurred by the Landlord?
2. Should the Landlord recover the filing fee?

Background and Evidence

D.D. stated that the tenancy began July 7, 2014. Monthly rent at that time was \$1,255.00 per month. She stated that the tenancy ended on August 31, 2016.

A copy of the move in and move out condition inspection report was provided in evidence. The move out report indicated that the rental unit was left dirty and stained. The Landlord requested that the Tenant agree to a reduction to his security deposit to address the cleaning and the Tenant refused to sign the report.

The Landlord also provided a Monetary Orders Worksheet wherein they claimed the following:

Carpet replacement (depreciated cost)	\$1,246.71
Cleaning of drapes	\$63.00
Replacement of patio drapes (depreciated cost)	\$89.82
Replacement of kitchen countertop (depreciated cost)	\$316.02
Bathroom light bulb	\$5.50
General cleaning	\$273.00
Partial August rent	\$30.00
Total Claimed	\$2,024.05

D.D. confirmed that the Landlord reduced the amounts claimed for the carpet, the drapes, and the countertop based on the age of those items as well as the expected life of those items as set out in *Residential Tenancy Policy Guideline 40*. Documents submitted by the Landlord confirm the value requested for the replacement of these items were appropriately reduced due to their age and the *Guideline*.

Photos submitted by the Landlord confirm the condition of the rental unit and in particular the excessive damage to the kitchen countertops.

Internal accounting records provided in evidence confirm that at the end of the tenancy the Tenant owed \$30.00 to the Landlord.

Analysis

Based on the undisputed evidence and testimony before me I find as follows.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find, based on the photos submitted in evidence, and the testimony of the Landlord's representatives that the Tenant damaged the carpet, drapes and kitchen countertop to such an extent that these items required replacement.

As noted during the hearing, the Landlord calculated the depreciated cost of these items in accordance with their age and *Residential Tenancy Policy Guideline 40*. I therefore award the Landlord the amounts claimed.

I also accept the Landlord's evidence that the drapes required cleaning and that the Tenant failed to replace a burned out light in the bathroom. *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides that a Tenant is responsible for replacing light bulbs during their tenancy as well as cleaning window coverings; therefore, I find The Landlord is entitled to recovery of the associated costs.

I accept that at the end of the tenancy the Tenant owed \$30.00 for his August rent; the Landlord's internal records confirm this amount as owing.

Conclusion

The Landlord's application is granted in its entirety. I therefore award the Landlord the full amount claimed as well as recovery of the filing fee for a total of **\$2,124.05** for the following:

Carpet replacement (depreciated cost)	\$1,246.71
Cleaning of drapes	\$63.00
Replacement of patio drapes (depreciated cost)	\$89.82
Replacement of kitchen countertop (depreciated cost)	\$316.02
Bathroom light bulb	\$5.50
General cleaning	\$273.00
Partial August rent	\$30.00
Filing fee	\$100.00
Total Awarded	\$2,124.05

The Landlord is granted a Monetary Order in the amount of **\$2,124.05**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 18, 2017

Residential Tenancy Branch