



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 MND, MNDC, MNSD, FF

Introduction

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

- a monetary order 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:56 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. Following the hearing, it was also confirmed from the online Telus teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The landlord's representatives testified that they sent individual copies of the landlord's dispute resolution hearing package and written evidence package to both tenants by registered mail on September 21, 2018. Landlord DS (the landlord) provided the Canada Post Tracking Numbers to confirm these registered mailings. The landlord testified that Canada Post's Online Tracking System revealed that both packages were successfully delivered to Tenant ARM (the tenant). I find that the tenants were deemed

served with these packages on September 26, 2017, in accordance with sections 88, 89 and 90 of the *Act*.

At the hearing the landlord reduced the amount of the requested monetary award from a total of \$906.05 (including the recovery of the \$100.00 filing fee) to \$657.00 (including the \$100.00 filing fee). I have reduced the amount of the landlord's requested monetary award accordingly.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damages arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord submitted undisputed written evidence and sworn testimony that this one-year fixed term tenancy began on February 1, 2017. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, this tenancy was to end on January 31, 2018. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$625.00 security deposit paid on February 1, 2017, when both tenants signed the Agreement.

On July 30, 2017, the tenant sent the landlord a signed "Breaking Lease Form" to end this tenancy by August 31, 2017. In this Breaking Lease Form, the tenant confirmed that the tenants understood that they would be responsible for the \$300.00 lease cancellation charge outlined in their Agreement. The tenant also gave their written authorization in that Form to allow the landlord to deduct this \$300.00 charge from the value of the security deposit for this tenancy.

The landlord's revised application for a monetary award of \$657.00 included the following items outlined on the Monetary Order Worksheet entered into written evidence by the landlord.

Item	Amount
Breaking Lease Form (Liquidated Damages Claim)	\$300.00
Postage	1.05
Drapery Cleaning	63.00
Carpet Cleaning	94.50
Suite Painting ($\$236.35 \times 5/12 = \98.45)	98.45
Total of Above Items	\$557.00

As noted above, the landlord's revised application also included the recovery of the landlord's \$100.00 filing fee, totalling \$657.00.

In support of the items identified in the landlord's claim for a monetary award, the landlord entered into written evidence an explanation of the items listed above, as well as invoices and receipts for each of the items listed in the landlord's application. The landlord also submitted photographic evidence and copies of the joint move-in condition inspection report of February 1, 2017, and the landlord's August 28, 2018 move-out condition inspection report, the latter of which neither tenant signed. At the hearing, the landlord also provided undisputed sworn testimony that the tenant was aware that section 2.10(b) of the Agreement called for the tenants' responsibility for the \$300.00 liquidated damages charge. This section of the Agreement notes that this charge was designed to cover the administration costs of re-letting the rental unit in the event that the tenants ended their fixed term tenancy before the scheduled end date for this tenancy.

The landlord also gave undisputed sworn testimony supported by written evidence that the male tenant who resided in the rental unit was a heavy smoker and that the rental unit required repainting when this tenancy ended in order to prepare it for the subsequent tenants. The landlords reduced the full painting charge of \$236.35 to \$98.45 to reflect that this tenancy did last seven of the anticipated twelve months established in the Agreement.

The tenants did not provide any written evidence, nor did they attend this hearing.

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.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 37(2) of the *Act* also requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the landlord applied for dispute resolution to retain the tenants’ security deposit within fifteen days of the end of this tenancy. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

I find that the landlord has provided clear written evidence that the tenant gave their written authorization at the end of this tenancy to retain \$300.00 from the security deposit pursuant to the liquidated damages clause contained within section 2.10(b) of the Agreement. For this reason, I allow the landlord’s claim of \$300.00 for liquidated damages.

The joint move-in condition inspection report of February 1, 2017 entered into evidence by the landlord showed that all parts of the rental unit were in good condition at that time. The landlord has provided undisputed sworn testimony, written evidence and photographs that this was not the case by the end of this tenancy. For these reasons, I accept that the landlord has adequately demonstrated that losses and damages resulted from this tenancy; losses and damages that exceeded those which would normally be anticipated through normal wear and tear. I also find that these losses and the damage to the rental unit extended beyond the \$300.00 liquidated damages allowance agreed to by Tenant ARM at the end of this tenancy.

I find that the landlord's claims for damage reflect actual expenses incurred and that the landlord has done their best to mitigate the tenants' exposure to the landlord's expenses to repair and restore this rental unit to a condition whereby it was successfully re-rented for September 2017. In coming to this determination, I take special note of the landlord's reduced claim for painting, which I find reasonable given the circumstances of this case.

The only area where I disallow the landlord's claim for damage and losses is for the landlord's application for a monetary award of \$1.05 to compensate the landlord for a postal charge. I find that this aspect of the landlord's application would either be covered in the landlord's pre-estimated \$300.00 liquidated damages claim or would be associated with the landlord's application for the recovery of the filing fee for this application. I dismiss the landlord's claim for recovery of this postage fee without leave to reapply. I allow the remainder of the landlord's claim.

As the landlord has been successful in this application, I allow the landlord's application to recover the landlord's \$100.00 filing fee. This is the only hearing related cost for which the landlord is entitled to compensation from the tenants.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision.

Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover damages, losses and the filing fee for this application, and to retain the tenants' security deposit:

Item	Amount
Breaking Lease Form (Liquidated Damages Claim)	\$300.00
Drapery Cleaning	63.00
Carpet Cleaning	94.50
Suite Painting ($\$236.35 \times 5/12 = \98.45)	98.45
Less Security Deposit	-625.00
Filing Fee	100.00
Total Monetary Order	\$30.95

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 10, 2018

Residential Tenancy Branch