



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 MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to sections 46 and 67;
- authority to retain the tenants' security deposit, pursuant to section 72; and
- repayment of the filing fee pursuant to section 72.

The tenants and the landlord's representatives attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the tenants testified that they did not receive the entire application for dispute resolution from the landlord and that the section of the notice which provided the hearing and dispute information was missing. The tenants testified that on May 09, 2018, they contacted the Residential Tenancy Branch and were provided with the missing information.

The tenants testified that they had enough time to adequately review and respond to all of the claims and evidence submitted by the landlord. I find that since the tenants had enough time to review and respond to the claims made against them, that the missing materials did not unduly prejudice the tenants and that this hearing will continue on its merits.

Assistant property manager D.S. (the “landlord”) testified that she served the tenants separate notice of dispute resolution packages by registered mail on December 22, 2017. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenants confirmed receipt of the dispute resolution packages. I find that the tenants were deemed served with these packages on December 27, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 46 and 67 of the *Act*?
3. Is the landlord entitled to retain the tenants’ security deposit, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This one-year fixed term tenancy began on June 1, 2016 and ended on February 28, 2017. Monthly rent in the amount of \$1,995.00 was payable on the first day of each month. A security deposit of \$997.50 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. On January 22, 2017, the tenants filled out a “Breaking Lease Form” provided by the landlord. The form stated a move out date of February 2017 and acknowledged the fact that the tenancy was not set to end until May 31, 2017 and that the tenants would be responsible for paying \$300.00 in liquidated damages. The Breaking Lease Form also contained the tenants’ forwarding address in writing. The landlord received the form on January 24, 2017.

Both parties agreed to the following facts. A move in condition inspection report was completed by both parties on June 1, 2016 and a move out condition inspection report (the "Move Out Report") was completed by both parties on February 24, 2017. The Move Out Report stated that the tenants were responsible for the following charges:

Item	Amount
Liquidated damages	\$300.00
Three months' rent (March, April and May 2017)	\$5,985.00
Postage	\$2.10
Carpet cleaning	\$151.20
Drape cleaning	\$171.36
Hydro	\$300.00
TOTAL	\$6,909.66

In regard to the three months' rent, the Move Out Report stated that charges due for lost rents due to breaking the lease are only estimates based on potential liability. The Move Out Report further stated that the landlord would make all efforts to rent the suite as soon as possible to mitigate the tenants' damages. The tenants signed the Move Out Report and agreed in writing to allow the landlord to deduct the above listed charges from their damage deposit.

Both parties agreed to the following facts. The landlord started advertising the rental property for rent in late January 2017 for \$2,150.00. At the end of January 2017, the landlord lowered the rent to \$2,100.00. On February 7, 2017 the landlord lowered the rental price again to \$1,955.00. The rental property was not rented out for March 2017 and the tenants paid rent for that month.

The landlord's controller (the "controller") testified that the market rate for the rental unit in question was \$2,150.00 in January 2017 and that is why the landlord started advertising at that price. The controller testified that other units similar in nature to the unit in question were listed at that price point and that there were few vacancies in the market at that time. The landlord testified that they continued to advertise the rental property and continued to reduce the rate they were charging in order to mitigate the loss incurred by the tenants.

The tenants testified that they did not believe the landlord was attempting to mitigate their loss. The tenants testified that the landlord was relying on the tenants to pay the rent until May 2017 while the landlord attempted to get a higher rate for the rental

property. On April 10, 2017 the tenants e-mailed the building manager advising that the tenants did not agree to pay April's rent as the landlord failed to mitigate its damages. The email was submitted into evidence.

The landlord testified that they were able to rent out the unit for April 25, 2017 at \$1,995.00 per month. The landlord testified that they are seeking the following damages from the tenants:

Item	Amount
Liquidated damages	\$300.00
Rent for April 1-24, 2017	\$1,596.00
Postage	\$1.05
Carpet cleaning	\$131.25
Drape cleaning	\$119.70
Filing Fee	\$100.00
TOTAL	\$2,248.00

The tenants testified that they agreed to deduct the carpet cleaning, drape cleaning and liquidated damages from their damage deposit but argued that the landlord failed to mitigate their damages and the tenants are therefore not required to pay for April 2017's rent. At the hearing, the tenants did not consent to deducting the postage charge from the security deposit.

The tenants testified that on April 10, 2017 they emailed the landlord stating that due to the landlord's lack of effort to rent the unit and the unreasonably high rental rate sought in January and early February 2017, they would not pay for April 2017 and May 2017 rent.

The landlord filed for dispute resolution on December 15, 2017.

Analysis

Damages/compensation and the duty to mitigate

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 3 states that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. Pursuant to Policy Guideline 5, if I find that the party claiming damages has not minimized the loss, I may award a reduced claim that is adjusted for the amount that might have been saved.

In this case, the tenants ended a one-year fixed term tenancy three months early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of March, April and May 2017. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible. The landlord chose to attempt to rent the unit at a rate higher than specified in the Agreement for approximately two weeks before lowering the price to \$1,995.00.

I find that for the two weeks (14 days) the landlord advertised the rental property over the rental rate of \$1,995.00, the landlord failed to mitigate its loss. The landlord is claiming 24 days of rent in April 2017, I find that due to the landlord's failure to mitigate its damages for 14 days, the landlord is only entitled to receive compensation for 10 days of rent for the month of April 2017. The pro-rated amount of rent for 10 days is \$665.00.

Agreed Upon Charges

At the hearing, the tenants agreed to the following deductions from their security deposit:

Item	Amount
Liquidated damages	\$300.00
Carpet cleaning	\$131.25
Drape cleaning	\$119.70
TOTAL	\$550.95

The landlord entered into evidence receipts for the above listed charges and a copy of the Breaking Lease Form. Based on the physical evidence provided by the landlord and

the testimony of both the landlord and the tenant, I find that the tenant is liable for the above listed charges in the amount of \$550.95

Postage

I find that the postage claimed by the landlord is a cost of doing business and is not a compensable loss arising out of the breach of the tenancy agreement. I decline to make a monetary award regarding postage.

Filing Fee

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$997.50 in part satisfaction of her monetary claim against the tenant.

I issue a monetary Order to the landlord under the following terms:

Item	Amount
Liquidated damages	\$300.00
Pro-rated rent for 10 days in 2017	\$665.00
Carpet cleaning	\$131.25
Drape cleaning	\$119.70
Filing Fee	\$100.00
Less security deposit	- \$997.50
TOTAL	\$318.45

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this

Order, this 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: June 18, 2018

Residential Tenancy Branch