



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 MNDC, MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for lost rental income, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 9, 2018. The Landlord continued to say the packages were returned as unclaimed. The Landlord said they sent the packages to the address given to them by the Tenants as their forwarding address. Tracking inform and a postal receipt were submitted into evidence by the Landlord. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants absence.

Issues(s) to be Decided

1. Are there rent arrears and or lost rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and lost rental income and if so how much?
3. Is there a loss or damage to the unit, site or property and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 10, 2017 as a fixed term tenancy with an expiry date of May 31, 2018. Rent was \$2,065.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,032.50 on May 9, 2017. The Landlord said the Tenants moved out of the rental unit on January 19, 2018 after being serviced a 10 Day Notice to End Tenancy for Unpaid rent dated January 9, 2018. The Landlord said a move in condition inspection was completed and signed on May 10, 2017 and a move out inspection was completed on January 19, 2018. The Landlord indicated the Tenants signed and agreed to all the deductions, the unpaid rent and lost rental income on the move out condition inspection report.

The Landlord said that the Tenants did not pay \$2,065.00 of rent for January, 2018 when it was due so the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated January 9, 2018. Following this the Tenants said they were moving out and on January 19, 2018 the Tenants moved out of the rental unit. The Landlord continued to say she thought they had an agreement with the Tenant to pay for the cleaning charges, unpaid rent and lost rental income up to the time the Landlord re-rented the unit. As well as the liquidated damages as indicated in clause 2.10 b of the tenancy agreement. The Landlord said the Tenant agreed to these costs on the move out inspection report and in an email dated February 2, 2018 where the Tenant writes "I will let you know as soon as I have a plan on paying that back please keep me informed if there someone renting our unit earlier that the lease ends."

The Landlord continued to say they tried to work with the Tenants with a payment plan but the Tenants stopped communicating with the Landlord so the Landlord made this application to recover their costs and expenses. The Landlord said their claim is as follows:

1. Blind and curtain cleaning (receipt submitted)	\$ 218.50
2. Cleaning (in house staff 10 hour @\$30.00/hour)	\$ 300.00
3. Light bulb replacement	\$ 16.50
4. Garage cleaning and junk removal.	\$ 500.00
5. Unpaid rent for January, 2018	\$2,065.00
6. Parking for January, 2018	\$ 50.00
7. Lost rental income February to April, 25, 2018	
February	\$ 2,065.00
March	\$2,065.00
April(25 days of 39 days)	\$1,720.83
Total	\$5,850.83
8. Liquidated damages	\$ 300.00
9. Late rent payments Jan, Feb, March, April, 2018 at \$25.00 for each month	<u>\$ 100.00</u>

TOTAL \$9,400.83

The Landlord continued to say the Tenant agreed to an estimate of these charges in the amount of \$12,036.05 on the move out condition inspection report dated May 10, 2017. Further the Landlord said they tried to mitigate the lost rental income by advertising the unit starting at the end of January, 2018. The Landlord submitted the contact log for this unit and it shows 15 enquires about this rental unit. Further the Landlord submitted a copy of the online advertisement for the unit and the Landlord indicated the market rent for this unit is \$2,065.00. The Landlord said the unit rented to a new tenant on April 25, 2018 for \$2,065.00 per month.

The Landlord also requested to retain the Tenants' security deposit in the amount of \$1,032.50 and the fob deposit of \$50.00 as partial payment of amounts owed and to recover the \$100.00 filing fee for this application.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$2,065.00 for January 2018.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has provided proof the unit was not rented from February 1, 2018 to April 25, 2018 and that the tenancy agreement with the Tenants was for a fixed term expiring on May 31, 2018. As well the Landlord provided evidence in the form of the move out condition inspection and an email showing that the Tenants knew about the Landlord's claims and agreed and signed to pay them. Consequently I award the Landlord the following claims:

1. Blind and curtain cleaning (receipt submitted)	\$ 218.50	
2. Cleaning (in house staff 10 hour @\$30.00/hour)	\$ 300.00	
3. Light bulb replacement	\$ 16.50	
4. Garage cleaning and junk removal.	\$ 500.00	
5. Unpaid rent for January, 2018	\$2,065.00	
6. Parking for January, 2018	\$ 50.00	
7. Lost rental income February1 to April, 25, 2018		
February	\$ 2,065.00	
March	\$2,065.00	
April(25 days of 39 days)	\$1,720.83	
Total		\$5,850.83
8. Liquidated damages	\$ 300.00	
9. Late rent payments Jan, Feb, March, April, 2018 at \$25.00 for each month		<u>\$ 100.00</u>
TOTAL		<u>\$9,400.83</u>

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and fob deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent, loss and damage claim:	\$ 9,400.83
	Recover filing fee	\$ 100.00
	Subtotal:	\$9,500.83
Less:	Security Deposit	\$ 1,032.50
	Fob Deposit	\$ 50.00
	Subtotal:	\$ 1,082.50
	Balance Owing	<u>\$ 8,418.33</u>

Conclusion

A Monetary Order in the amount of \$8,418.33 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 1, 2018

Residential Tenancy Branch