



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNRL-S

Introduction

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

- authorization to retain the tenant's security deposit, pursuant to section 38 of the *Act*;
- a monetary order pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*.

Only the landlord's agent, E.S. (the "landlord") appeared at the hearing by way of conference call. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord stated that he sent the tenant a copy of the Application for Dispute Resolution and an evidentiary package via Canada Post Registered Mail on August 16, 2018. The landlord provided a copy of the Canada Post Registered Mail tracking number during the hearing. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is deemed to have been served with these documents on August 21, 2018, five days after their posting.

Following opening remarks, the landlord asked to amend his application for a monetary award by \$25.00 to include a bank fee associated with a returned cheque. Pursuant to section 64(3)(c), I amend the landlord's application to reflect this new charge that was incurred following the conclusion of the tenancy.

Issue(s) to be Decided

Can the landlord recover a monetary award?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided by the landlord explained this tenancy began on March 1, 2014 and ended on July 24, 2018. Rent was \$1,591.00 per month while a security deposit of \$700.00 paid at the outset of the tenancy continues to be held by the landlord. A \$75.00 fob deposit was also paid by the tenant and continues to be held by the landlord.

The landlord said he was seeking a monetary award of \$1,731.00 which included unpaid rent for August 2018 (\$1,591.00), \$115.00 for carpet cleaning and a return of \$25.00 for a banking fee related to a returned cheque.

The landlord explained the tenant provided notice of his intention to vacate the rental unit on July 16, 2018 and therefore failed to give adequate notice to the landlord as was required by the *Act* and the tenancy agreement signed by the parties. In addition, the landlord said the tenant agreed at the conclusion of the tenancy to pay \$115.00 for carpet cleaning, while a cheque for August 2018 rent was returned by the bank, leading the landlord to incur a \$25.00 service charge.

The landlord said that he suffered a loss as a result of this late notice to vacate the premises because rent was unpaid for August 2018. The landlord described the efforts he undertook to re-rent the suite which included, immediately uploading an advertisement for the unit to the internet and having multiple showings. The landlord said he eventually managed to secure a new tenant for August 14, 2018 and that this tenant paid \$1,700.00 per month.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but

specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

An award of compensation must be examined in light of *Residential Tenancy Policy Guideline #16* which notes, “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.”

After having considered the testimony of the landlord and following a review of the evidence submitted, I find no loss has been incurred as it relates to rent for August 2018 rent. Thanks to the landlord’s significant efforts a new tenant was quickly found and the landlord was without a tenant for only two weeks in August 2018. The landlord managed to secure a new tenant starting August 14, 2018 and this person paid a rental rate above what was being paid by the former tenant. Had the rental unit remained unoccupied for the entire month, I may have been inclined to award a monetary award for loss; however, no loss was demonstrated by the landlord. For these reasons I dismiss this portion of the landlord’s application.

I accept the landlord’s undisputed testimony that the tenant agreed to pay \$115.00 for carpet cleaning that was not performed at the conclusion of the tenancy. Pursuant to section 72 of the *Act*, I allow the landlord to retain this amount from the tenant’s security deposit.

The final portion of the landlord’s application concerned a return of \$25.00 associated with a returned cheque for August 2018 rent. I find the landlord must bear this cost as the landlord had no right under the *Act* to withdraw these funds. Rent was not due as the tenant was no longer in occupation of the unit and the landlord attempted to access these funds in error. For these reasons, I decline to award the landlord a return of the \$25.00 returned cheque.

As the landlord was partially successful, he may recover a portion of the filing fee. I order the landlord to retain a further \$50.00 from the tenant’s security deposit.

Conclusion

The landlord is ordered to retain \$165.00 from the tenant's security deposit in full satisfaction for a return of the filing fee and a return of the costs associated with carpet cleaning. The landlord is directed to return the remaining balance of the security and fob deposit to the tenant.

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: December 12, 2018

Residential Tenancy Branch