



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding HOLLYBURN ESTATES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for compensation for damages, for compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Tenant during the approximately 27-minute hearing.

The Landlord confirmed that the Notice of Dispute Resolution Proceeding package and a copy of their evidence was sent to the Tenant by email. Copies of the emails were submitted as evidence, as was a substituted service decision dated November 5, 2018. In this decision, the Landlord was granted permission to serve the Tenant at the email address in which they had previously established communication. As such, I find that the documents served to the Tenants by email are sufficiently served, pursuant to Section 71 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on November 20, 2014 and ended on August 1, 2018. Monthly rent at the end of the tenancy was \$1,444.00 and a security deposit of \$655.00 was paid at the outset of the tenancy. The tenancy agreement and notices of rent increase were submitted into evidence and confirm the details as stated by the Landlord.

The Landlord stated that the Tenant was evicted due to non-payment of rent. They had a previous dispute resolution proceeding in which they obtained an Order of Possession and a Monetary Order for unpaid rent. The previous decision and orders were submitted into evidence. The decision, dated July 26, 2018, granted the Landlord a two-day Order of Possession as well as a Monetary Order for July 2018 rent in the amount of \$1,444.00. The file number from the July 26, 2018 decision is noted on the front page of this decision.

The Landlord stated that they attended the Tenant's rental unit on August 1, 2018 and found it empty. Although the Tenant was out of the country at the time, they stated that his roommate had moved their belongings out. The Landlord stated that this is why the Tenant did not participate in the move-out inspection. The move-in Condition Inspection Report was submitted into evidence and signed by both Landlord and Tenant on November 20, 2014. The move-out Condition Inspection Report was completed and signed by the Landlord on August 2, 2018 without the Tenant present.

The Landlord has applied for a total of \$2,278.00 as well as the \$100.00 filing fee paid for the Application for Dispute Resolution for a total of \$2,378.00, as noted on a Monetary Order Worksheet submitted into evidence.

The Landlord applied for drapery cleaning in the amount of \$58.80. The Landlord stated that the drapes were not cleaned during the tenancy and therefore they had them professionally cleaned. A receipt for the cleaning dated August 16, 2018 was included as evidence showing a charge of \$58.80.

The Landlord also claimed \$480.00 for cleaning of the entire rental unit as well as \$165.00 for the flat rate of cleaning the appliances. The Landlord submitted a ledger of their staff hours indicating that 16 hours was spent for cleaning and garbage removal for a charge of \$480.00 and 6 hours were spent cleaning appliances for a total cost of \$180 for which they are charging the Tenant the flat rate of \$165.00. The Landlord submitted photos of the rental unit at the end of the tenancy showing areas that required cleaning as well as garbage and items left behind.

The Landlord also claimed \$100.00 for garbage removal and stated that this was the cost for their staff to dispose of any garbage or junk left behind in the rental unit. The Landlord stated that they stored belongings left behind by the Tenant such as clothing, and that the Tenant recently picked these items up.

The Landlord claimed \$112.50 for the labour costs for replacing the bathroom door and repairing the bedroom door, as well as \$44.30 for the cost of the replacement door. The Landlord is also seeking \$63.00 for the cost of painting the bathroom and bedroom doors after they were repaired and replaced.

The Landlord submitted photos that show the bathroom door with a large hole in it, as well as writing all over the door. The Condition Inspection Report at move-out notes holes in the bathroom and bedroom doors. Both doors were noted to be in good condition at the start of the tenancy.

The staff ledger submitted by the Landlord shows that 1.5 hours was spent repairing the bedroom door for a cost of \$67.50 and that one hour was spent replacing the bathroom door for a cost of \$45.00, for a total of \$112.50. The Landlord submitted an invoice dated August 14, 2018 for the purchase of supplies for repairs. While the total bill was \$137.15, the Landlord highlighted the door purchase which totalled \$44.30 with tax.

The Landlord also submitted an invoice dated August 14, 2018 showing a cost of \$60.00 plus tax to paint the two doors for a total of \$63.00.

The Landlord is also seeking compensation in the amount of \$900.40 for the cost of the carpet replacement throughout the rental unit, with the exception of the bathroom and kitchen which were not carpeted. The Landlord stated that the carpet was brand new at the start of the tenancy in 2014. The carpets were noted as clean and undamaged on the move-in inspection. The Landlord submitted photos of the carpet showing stains and holes in various areas at the end of the tenancy.

The Landlord stated that the total cost of replacing the carpet was \$1,442.07 as stated on an invoice dated October 19, 2018. The Landlord also submitted their calculations for the Tenant's cost for the repairs, given the expected normal wear and tear through use and during a four-year tenancy. The Landlord calculated that the Tenant should be responsible for a cost of \$900.40 towards the replacement of the carpet.

The Landlord stated that there were holes throughout the carpet as well as significant stains throughout. As such, they stated that a repair was not possible due to the number of patches that would be required and therefore they replaced the entire carpet.

Lastly, the Landlord has claimed \$354.00 in unpaid rent and late fees which they stated was the balance of what was owed at the end of the tenancy as shown on the Tenant's account ledger. The Landlord stated that the Tenant would pay in partial payments while left an amount of rent owing as well as late fees. The Landlord testified that the total amount owing for July 2018 was \$1,783.00 which included parking and storage fees. The parking agreement and locker storage agreement were submitted into evidence showing that the Tenant was to pay a monthly amount of \$50.00 for parking and a monthly amount of \$30.00 for two lockers.

As the Landlord already received a Monetary Order for July 2018 rent in the amount of \$1,444.00, this leaves an amount of \$339.00 owing. The Landlord stated that there was also a late fee charge of \$15.00 for July 2018 which leads to a total amount owing of \$354.00. The Tenant's account ledger submitted into evidence shows the charges and payments made since the start of the tenancy and indicates an amount of \$1,783.00 owing as of July 2018, as well as a late fee of \$15.00 for July 2018. The tenancy agreement states that a late fee of \$15.00 will be charged if rent is not paid when due.

Analysis

Section 37 of the *Act* states that a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. I accept the photos and the move-out Condition Inspection Report submitted by the Landlord as evidence that the Tenant did not leave the rental unit reasonably clean or undamaged. Therefore, I find that the Tenant breached Section 37 of the *Act*.

As stated in Section 7 of the *Act*, if a party breaches the *Act*, *Regulation* or tenancy agreement they must compensate the other party for any losses that occur as a result. I accept the undisputed testimony and evidence of the Landlord that they experienced a loss due to the cleaning and repairs that were required after the Tenant moved out. Therefore, I find that the Tenant must compensate the Landlord for the costs incurred.

As stated in Section 35 of the *Act*, the parties must conduct an inspection at the end of the tenancy. However, I accept the testimony of the Landlord that the Tenant had already vacated the rental unit before they were able to arrange a time for a move-out inspection. As the parties completed a move-in inspection together on November 20, 2014, I accept that the move-out inspection completed by the Landlord on August 2, 2018 demonstrates that the damage occurred during the tenancy. I also find the photos of the rental unit to confirm the information contained on the move-out inspection.

I accept the evidence of the Landlord submitted by the Landlord that establishes the value of their loss through the invoices, receipts and ledgers that confirm the amounts claimed by the Landlord. As stated in Section 7(2) of the *Act*, a party claiming a loss also has a duty to take reasonable steps to minimize their losses. However, I find the compensation claimed by the Landlord for cleaning and repairs to be reasonable and that reasonable steps to mitigate were taken where possible.

Although the Landlord applied for \$100.00 for the cost of garbage removal, I fail to find this cost outlined in their evidence. Instead, I find that garbage removal costs were included in the \$480.00 charge on the staff ledger that notes 16 hours of cleaning and garbage removal. Therefore, I decline to award an additional \$100.00 for garbage removal as claimed.

As for the carpet replacement, I accept the testimony of the Landlord that the carpet was new at the start of the tenancy. I also accept the photos that show significant staining and damage to the carpet and find it likely that they would have been unable to

repair the carpet and instead that a full replacement was required. As such, I find that the Landlord was not able to minimize their loss by repairing the carpet due to the significance of the damage that occurred.

However, I also find it reasonable that the Landlord calculated the value of the carpet at the end of the tenancy given the normal wear and tear and use that occurred during the tenancy. I accept their calculations that show a charge of \$900.40 to the Tenant, instead of the full cost of replacement.

I find that the Landlord also established the remainder of their claims for cleaning and repairs through the submission of the invoices and receipts for the work completed and the cost of repairs which match the amounts claimed by the Landlord. As stated, I am also satisfied that the damage occurred during the tenancy based on the photos and Condition Inspection Reports.

I also note that a Tenant must pay rent as due as per the tenancy agreement, pursuant to Section 26 of the *Act*. I accept the Tenant account ledger submitted into evidence by the Landlord that shows underpayments that led to an amount of \$1,783.00 owing for July 2018. I also accept that the Tenant owed a monthly amount for parking and storage over and above the monthly rent amount.

As the Landlord received a Monetary Order dated July 26, 2018 for the amount of \$1,444.00 for July 2018 rent, I find that an amount of \$339.00 remains outstanding, along with a \$15.00 late payment fee. As stated in Section 7 of the *Regulation*, a landlord may charge a late payment fee of up to \$25.00, provided that the tenancy agreement notes this fee. Upon review of the tenancy agreement, I find that it does provide for a late payment fee and therefore the Landlord is entitled to compensation for this fee as well. Pursuant to Section 67 of the *Act*, I find that the Landlord is owed a total of \$354.00 for outstanding rent and fees incurred throughout the tenancy that remained unpaid at the end of the tenancy.

As stated, I am satisfied that the Landlord has established their claims with the exception of the \$100.00 claimed for garbage removal. As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I also award the recovery of the filing fee in the amount of \$100.00.

The Landlord applied to retain the security deposit of \$655.00 towards the total amount owing. In accordance with Section 38(1) of the *Act*, a landlord has 15 days from the

later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposit or file a claim. Although the tenancy ended on August 1, 2018, as the Tenant did not provide a forwarding address I find that the Landlord was within their rights to claim against the security deposit when they applied on October 15, 2018. As such, the Landlord may retain the security deposit towards the total amount owing. The Landlord is awarded a Monetary Order in the amount outlined below:

Drapery cleaning	\$58.80
Cleaning and garbage removal	\$480.00
Bathroom and bedroom door repair and replacement – labour costs	\$112.50
Appliance cleaning	\$165.00
Carpet replacement	\$900.40
New bathroom door	\$44.30
Bathroom and bedroom door painting	\$63.00
Unpaid rent and late payment fees	\$354.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$655.00)</i>
Total owing to Landlord	\$1,623.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,623.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: March 13, 2019

Residential Tenancy Branch