



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 FFL MNRL-S

Introduction

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

- authorization to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for liquidated damages in the amount of \$1,231.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the dispute resolution package via registered mail sent on January 8, 2019 to the forwarding address provided by the tenant. The landlord's agent provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on January 13, 2019, five days after the landlord's agent mailed it, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order in the amount of \$1,231.00 for unpaid rent and liquidated damages;
- 2) retain the security deposit of \$925.00 in partial satisfaction of the monetary order sought; and
- 3) recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the claim and my findings are set out below.

The parties entered into a written, one-year, fixed-term tenancy agreement starting October 1, 2018. Monthly rent is \$1,850.00 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$925.00. The landlord still retains this deposit.

The tenancy agreement contains the following clause:

LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay the landlord the sum of \$805.33 as liquidated damages and not as a penalty. Liquidated damages are and agreed to pre-estimate of the landlords cost of re-renting the rental unit and must be paid in addition To any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord's agent testified that the pre-estimated costs of renting include:

- compensation for the property manager's time when showing the rental unit;
- advertising and marketing costs; and
- the cost of preparing the rental unit for showings (both time and supplies).

On November 30, 2018, the tenant served a Notice to Vacate form on the landlord stating he would vacate the rental unit on December 31, 2018. He provided the landlord with his forwarding address to the landlord on the Notice to Vacate.

On November 30, 2018, the landlord advised the tenant in a written letter that his Notice to Vacate was in violation of the Act, as the tenancy was a fixed-term tenancy for one year, and that the effective date of the tenant's notice was earlier than the date specified in the tenancy agreement as the end of tenancy date (September 30, 2019). In this letter the landlord advised the tenant that it accepted his termination notice effective the next legal date in accordance with the Act.

This letter was entered into evidence, and was signed by the tenant.

On December 31, 2018, the tenant vacated the rental unit. On that same day, the parties conducted a move-out condition inspection, and the landlord prepared a move-out condition inspection report, which the tenant refused to sign.

The landlord re-rented the rental unit on January 7, 2019.

The landlord claims damages as follows:

Pro-rated rent (January 1 to 7, 2019)	\$425.75
Liquidated damages	\$805.33
Total	\$1,231.08

Analysis

Loss of Rent

I find that the tenancy agreement was for a fixed term of one year, ending September 30, 2019. I find that the tenant vacated the rental unit on December 31, 2018. By vacating the rental unit early, the tenant breached both the tenancy agreement and section 45(2) of the Act, which states:

- (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice,
 - (b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the earliest the tenant may have vacated the rental unit, in compliance with the Act, is September 30, 2019 (unless otherwise ordered by an arbitrator of the Residential Tenancy Branch).

The landlord is entitled to be compensated for the damage it suffered as the result of the tenant's breach, subject to its duty to minimize damages, pursuant to section 7 of the Act, which states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant 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.

Policy Guideline 5 states:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or 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.

Once the tenants vacated the rental unit (on December 31, 2019), the landlord had an obligation to re-let the rental unit as soon as was practical. I find that, by re-renting the rental unit on January 8, 2019, the landlord satisfied its duty to minimize its loss suffered by the tenant's breach. I accept the landlord's calculation that it lost \$425.75 in rental revenue for the period of January 1 to January 7, 2019, as the result of the tenant's breach of the Act.

Accordingly, I find that the tenant must pay the landlord \$425.75, pursuant to section 67 of the Act.

Liquidated Damages

Policy Guideline 4, in part, states:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable

Based on the testimony of the landlord's agent, I find that the amount of liquidated damages set out in the tenancy agreement is a genuine pre-estimate of the loss that the landlord would suffer as the result of the tenant's breach. This amount is not extravagant and is equal to less than half a month's rent.

Accordingly, I find that the landlord is entitled to receive liquidated damages in the amount set out in the tenancy agreement (\$805.33)

As the landlord was successful in its claim, I order that the tenant repay the landlord the filing fee (\$100.00).

The landlord applied to retain the security deposit and credit it against any monetary award I might make. Accordingly, I order that the landlord may retain the security deposit (\$925.00) in partial satisfaction of the monetary awards I have made in this decision.

In total, the landlord is entitled to a monetary order against the tenant in the amount of \$406.08, as follows:

Pro-rated rent (January 1 to 7, 2019)	\$425.75
Liquidated damages	\$805.33
Filing fee	\$100.00
Security deposit credit	-\$925.00
Total	\$406.08

Conclusion

Pursuant to section 72(2), I order that the landlord may retain the entire security deposit in partial satisfaction of the damages caused to it by the tenant.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$406.08.

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 26, 2019

Residential Tenancy Branch