



Dispute Resolution Services

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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, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on December 28, 2018, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent, compensation for cleaning and repairs to the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on April 18, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and which was brought to my attention by the parties. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Assistant Property Manager, D.S., testified as follows. She confirmed that this tenancy began January 3, 2014. Monthly rent was \$1,309.00 at the time the tenancy ended. The Tenant also paid a security deposit of \$580.00.

The tenancy ended pursuant to an Order of Possession granted on December 10, 2018 (the file number for that matter is recorded on the unpublished cover page of this my Decision). The Tenant vacated the rental unit on December 13, 2018.

The Landlord applied for the Order of Possession by way of Direct Request Proceeding. Although the Order of Possession was granted, the Landlord's request for monetary compensation was dismissed with leave to reapply as the Landlord failed to serve the Tenant by registered mail (which is required in applications where monetary compensation is sought).

The Landlord's monetary claim was the subject of the proceedings before me on April 18, 2019.

In support of their claim the Landlord filed a Monetary Orders worksheet in which the following was claimed:

Unpaid rent and late fees	\$2,668.00
Appliance cleaning	\$102.00
Suite cleaning	\$598.50
Replacement light bulbs	\$25.00
Garbage and furniture disposal	\$500.00
Blind/drape cleaning/repair	\$336.00
Filing fee	\$100.00
TOTAL CLAIMED	\$4,329.50

D.S. confirmed that there were \$50.00 in late fees included in the \$2,668.00 claimed for unpaid rent (D.S. also stated that late fees were provided for in the tenancy agreement.)

In terms of the condition of the rental unit at the end of the tenancy, D.S. testified that she reviewed the photos of the rental unit taken by the building manager to confirm the condition of the rental unit at the time the tenancy ended.

The Building Manager, D.D., also testified. She confirmed that she completed the move out condition inspection report as well as taking the photos of the rental unit at the time the tenancy ended.

D.D. stated that the rental unit was left with the majority of the Tenant's personal possessions in the rental unit. She also stated that the rental unit was not cleaned as required.

D.D. further confirmed that she was responsible for disposing of the items left in the rental unit by the Tenant.

Introduced in evidence was a copy of the Move Out Condition Inspection Report completed on December 18, 2018. This report supported the Landlord's claim for cleaning costs as well as costs to remove the Tenant's items left at the rental unit.

The Tenant replied to the Landlord's submissions as follows.

The Tenant stated that she did not pay the November 2018 rent. She also stated that she moved out of the rental unit on December 11, 2018 such that she believed she should only be responsible for rent until December 11, 2018.

The Tenant stated she has always been responsible and paid her bills, but was not in this tenancy as she claimed she developed psychosis as a result of the condition of the rental unit. The Tenant also confirmed that she did not clean the rental unit or remove her items; the Tenant further confirmed that everything the Landlord's representatives said about the condition of the rental unit was true.

The Tenant stated that she intended to apply for dispute resolution seeking monetary compensation for the losses she suffered as a result of the tenancy and that it was her belief that her losses would supersede those of the Landlord's in this application. The Tenant confirmed that she had not yet made this application.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find that the Tenant failed to pay the November and December rent as required. Although the Tenant vacated the rental unit on December 13, 2018, I find the Landlord suffered a loss of rent for the entire month of December as it would not be reasonable to expect the Landlord to re-rent the rental unit earlier than January 1, 2019. I therefore find the Landlord is entitled to monetary compensation for unpaid rent for November and December 2018.

I also accept the Landlord's representatives' evidence that the residential tenancy agreement provided for late fees; as rent was not paid for November and December the Landlord is also entitled to recovery of those fees.

Introduced in evidence was a copy of the Move Out Condition Inspection Report confirming the condition of the rental unit at the end of the tenancy. Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I therefore find that the rental unit was in the condition as detailed in the Move Out Condition Inspection Report.

Notably, the Tenant did not dispute that she left the rental unit unclean and with numerous personal items such that the Landlord incurred the cost to clean and dispose of those items. The Landlord also submitted several photos in evidence all of which support a finding that significant cleaning and removal of items was required.

For the above reasons I find the Landlord is entitled to monetary compensation for the costs associated with cleaning the rental unit at the end of the tenancy as well as the costs to remove the Tenant's items.

As the Landlord has been successful in their application, and pursuant to section 72 of the *Act*, I find that the Landlord is also entitled to recover the \$100.00 filing fee.

During the hearing the Tenant stated that she intended to file an Application for Dispute Resolution seeking monetary compensation from the Landlord. The Tenant was informed that she may not seek compensation through the Landlord's application as she must file her own claim.

The parties were reminded that they must file their evidence in support and in response to the Tenant's application (should she make one) as the evidence filed in relation to the Landlord's Application (which was the subject of the proceedings before me) would not be evidence in any future claims.

The parties were further reminded of the time limits imposed by section 60 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$4,329.50** for the following:

Unpaid rent and late fees	\$2,668.00
Appliance cleaning	\$102.00
Suite cleaning	\$598.50
Replacement light bulbs	\$25.00
Garbage and furniture disposal	\$500.00
Blind/drape cleaning/repair	\$336.00
Filing fee	\$100.00
TOTAL AWARDED	\$4,329.50

Pursuant to section 72 of the *Residential Tenancy Act* I authorize the Landlord to retain the Tenant's \$580.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,749.50**.

This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

For the purposes of service of the Monetary Order I Order that the Landlord may serve the Tenant at her email address, pursuant to section 77 of the *Act*. (The Tenant's email address is as noted on the unpublished cover page of this my Decision.)

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 23, 2019

Corrected: April 29, 2019

Residential Tenancy Branch