



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 MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for unpaid rent or utilities, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The tenants and the landlord agent KH ("agent") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find that both parties were sufficiently served under the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2018 and was scheduled to revert to a month to month tenancy after March 31, 2019. Monthly rent during the tenancy was \$1,800.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$900.00 at the start of the tenancy, which the landlord continues to hold and has accrued \$0.00 in interest to date.

The landlord's reduced monetary claim of \$1,456.29 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent January 1-11, 2019	\$650.96
2. Liquidated damages	\$805.33
3. TOTAL	\$1,456.29

Regarding item 1, the landlord has claimed \$650.96 due to the tenants' breaching a fixed term tenancy, which according to the signed tenancy agreement was not scheduled to revert to a month to month tenancy until March 31, 2019. The agent stated that the amount of \$650.96 is for January 1, 2019 to January 11, 2019 rent, inclusive.

The tenants stated that they only ended the tenancy as they were under the impression that by paying the liquidated damages, that they were not responsible for any other costs to end the fixed term tenancy earlier. The agent confirmed that at no point did the landlord give up their right to seek compensation for loss of January 1-11, 2019 loss of rent. The agent confirmed that new tenants moved into the rental unit from January 12, 2019, onwards and as a result, have not claimed for that period of time at the same monthly rent of \$1,800.00. The parties confirmed that they did not sign a Mutual Agreement to End Tenancy document.

Regarding item 2, the landlord is seeking \$805.33 as the cost of liquidated damages as set out in clause #5 on the signed tenancy agreement and which was initialed by both

parties. The tenants confirmed that they agreed to the liquidated damages but did not agree to any other costs related to ending the tenancy early.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - The landlord has claimed \$650.96 due to the tenants' breaching a fixed term tenancy, which according to the signed tenancy agreement was not scheduled to revert to a month to month tenancy until March 31, 2019. The agent stated that the amount of \$650.96 is for January 1, 2019 to January 11, 2019 rent inclusive.

The tenants stated that they only ended the tenancy as they were under the impression that by paying the liquidated damages, that they were not responsible for any other costs to end the fixed term tenancy earlier. I find that in the absence of a signed Mutual Agreement to End Tenancy, the landlord did not waive any right to seek compensation for loss of rent under the *Act*.

Section 45(2) of the *Act* applies and states:

Tenant's notice

45 (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.

[Emphasis added]

Based on the above, I find the tenants breached section 45(2)(b) of the *Act* by vacating the rental unit earlier than that date specified in the fixed term tenancy agreement, which was March 31, 2019. The tenants vacated on December 31, 2018. I also find that the landlord complied with section 7 of the *Act* by re-renting the rental unit to a new tenant in what I find to be a reasonable time frame. Therefore, I find the landlord has met the burden of proof and is owed compensation for January 1-11, 2019 inclusive, for rental loss. I find the amount claimed by the landlord is not correct, however. I find that the amount owed is as follows. January 2019 rent of \$1,800.00 divided by 31 days is \$58.06 for the per diem rental rate. I find the tenants owe the landlord 11 days multiplied by \$58.06, for a total of **\$638.66** in loss of rent. I dismiss the additional \$12.30 amount, which was a total of \$650.96 for item 1 claimed by the landlord, due to insufficient evidence, without leave to reapply.

Item 2 - The landlord is seeking \$805.33 as the cost of liquidated damages as set out in clause #5 on the signed tenancy agreement and which was initialed by both parties. The tenants confirmed that they agreed to the liquidated damages but did not agree to any other costs related to ending the tenancy early. I find the tenants did breach a fixed term tenancy and that the landlord is owed **\$805.33**, pursuant to clause 5 of the tenancy agreement. I note the amount was agreed to by the parties at the start of the tenancy and that the landlord has met the burden of proof.

As the landlord's application was successful, I grant the landlord **\$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim of **\$1,543.99** comprised of \$638.66 for item 1, \$805.33 for item 2, plus the \$100.00 filing fee. I authorize the landlord to retain the tenants' full security deposit of **\$900.00**, which

has accrued no interest to date, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$643.99**.

I caution the tenants not to breach section 45(2) of the *Act* in the future.

Conclusion

The landlord's claim is successful.

The landlord has established a total monetary claim of \$1,543.99. The landlord has been authorized to retain the tenants' full \$900.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$643.99. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 21, 2019

Residential Tenancy Branch