



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 FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 08, 2019 (the "Application"). The Landlord applied for the following:

- Compensation for damage to the unit;
- Compensation for monetary loss or other money owed;
- To recover money for unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

D.S. and S.E. appeared at the hearing for the Landlord. The Tenants appeared at the hearing with S.M. to assist given a language barrier. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to recover money for unpaid rent?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord originally sought the following:

1	Drapery Cleaning	\$58.80
2	Carpet Cleaning	\$94.50
3	Smart Card (laundry card)	\$50.00
4	Liquidated damages	\$450.00
5	December rent	\$1501.45
6	October and December late fees	\$50.00
7	Filing fee	\$100.00
	TOTAL	\$2,304.75

At the hearing, item #3 was not an issue because the Tenants had returned this.

At the hearing, the Tenants agreed the Landlord can keep the entire security deposit towards liquidated damages. The Tenants would not clarify what else the Landlord could use the security deposit towards.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 06, 2018 and was for a fixed term ending July 31, 2019. Rent was \$1,605.00 due on the first day of each month. The Tenants paid a \$802.50 security deposit.

D.S. testified that the Tenants gave notice ending the tenancy for November 30, 2018. D.S. testified that the tenancy ended December 24, 2018. She testified that this is the date the Tenants gave back the keys to the rental unit.

The Tenants, through S.M., testified that they vacated the rental unit December 01, 2018 and returned the keys December 24, 2018.

D.S. testified that the Tenants provided their forwarding address on the Breaking Lease Form. She said she sent the Tenants documents, but they were returned. She testified that she saw one of the Tenants and obtained the correct address January 18, 2019.

The Breaking Lease Form was submitted as evidence. It is dated November 07, 2018.

The Tenants, through S.M., acknowledged that one of the numbers in the forwarding address was wrong. The Tenants did not recall the relevant dates but agreed the November 07, 2018 and January 18, 2019 dates noted above were probably correct.

D.S. testified that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

D.S. submitted that the Tenants agreed to the Landlord keeping the security deposit on the Breaking Lease Form.

The Tenants, through S.M., advised that they agree to the Landlord keeping the security deposit.

The Tenants testified that they were ready to give the unit over December 01, 2018 and that they wanted to return the keys between December 01, 2018 and December 24, 2018 but the Landlord refused to accept them.

Both parties agreed on the following. A move-in inspection was done July 06, 2018. The unit was empty. A report was completed and signed by both parties.

The Tenants testified that they received a copy of the move-in report July 06, 2018 in person.

D.S. testified as follows. There was a move-out inspection done December 24, 2018. The unit was empty. A move-out report was done but not signed by the Tenants.

The Tenants testified as follows. The Landlord did not allow the Tenants to do the move-out inspection. Staff came back with the report and had Tenant M.P. initial the report at the office. They were given a copy of the move-out report December 24, 2018 in person.

D.S. testified that the Landlord would never do an inspection without tenants and that the Tenants initialled the move-out report.

Drapery Cleaning

D.S. testified that the drapes were professionally cleaned on move-in and the Tenants were expected to professionally clean them on move-out. D.S. pointed to Schedule G of the tenancy agreement in relation to the cost of cleaning drapes. D.S. testified that the drapes had to be professionally cleaned and pressed at the end of the tenancy.

S.E. pointed to term 3.05(i) and (j) in the tenancy agreement in relation to this issue.

D.S. relied on the Condition Inspection Report, photos, tenancy agreement and invoice submitted in relation to this issue.

The Tenants testified as follows. The drapes were clean at the end of the tenancy. They were not told the drapes had to be professionally cleaned.

Carpet Cleaning

D.S. relied on photos, the Condition Inspection Report and an invoice in relation to this issue. D.S. pointed to the Tenants' initials on the Condition Inspection Report where it shows the carpets were dirty.

The Tenants testified that the Landlord told them not to clean the carpet because it had recently been sprayed for bed bugs. The Tenants said they were told to just vacuum the carpet.

The Tenants could not point to any documentation showing the Landlord told them they did not have to clean the carpet.

In reply, D.S. testified that the Landlord would never have told the Tenants not to clean the carpet.

Liquidated damages

The Tenants agreed at the hearing to the Landlord keeping the security deposit towards the liquidated damages claim.

December rent

D.S. testified as follows. The Breaking Lease Form says the Tenants would vacate November 30, 2018; however, they did not leave until December 24, 2018. The Landlord received keys from the Tenants December 24, 2018. The Tenants never paid for December rent. The unit was posted for rent again December 13th or 14th. The unit was re-rented for December 30, 2018.

The Tenants testified as follows. They were ready to give up possession of the rental unit December 01, 2018. They contacted the manager who said they would not accept the keys back because they needed to inspect for bed bugs. The Landlord did not accept the keys back until December 24, 2018.

The Tenants did not agree that they breached the *Residential Tenancy Act* (the “Act”) by breaking the lease early. They said they intended to stay long term but could not because of bed bugs.

The Tenants did not think they had written to the Landlord stating that the Landlord had breached a material term of the tenancy agreement and that they would end the tenancy if the breach was not addressed within a reasonable time. D.S. testified that the Tenants did not do so.

The Tenants could not point to any documentary evidence showing they tried to give the keys back prior to December 24, 2018.

In reply, D.S. testified that the Tenants did not try to give the keys back earlier than December 24, 2018.

October and December late fees

The Tenants agreed to pay the late fees for October.

D.S. confirmed that the request for the December late fee flows from the fact December rent was never paid.

Analysis

Section 7 of *Act* states:

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

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

Based on the testimony of the parties in relation to the move-in inspection, I find that neither the Tenants nor the Landlord extinguished their rights in relation to the security deposit under section 24 of the *Act*.

I understood the parties to agree that one of the Tenants initialled the move-out Condition Inspection Report. The parties gave conflicting testimony about whether one of the Tenants participated in the move-out inspection. Based on the initialled Condition Inspection Report, I find it more likely that one of the Tenants did participate. The Tenants did not point to any evidence in support of their position that the Landlord did not allow them to participate.

Based on the testimony of the parties in relation to the move-out inspection, and my finding above, I find that neither the Tenants nor the Landlord extinguished their rights in relation to the security deposit under section 36 of the *Act*.

Both parties agreed the Tenants gave the keys to the rental unit to the Landlord December 24, 2018. I find this is the end of the tenancy for the purposes of section 38(1) of the *Act*. There is no issue that the Tenants provided their forwarding address on the Breaking Lease Form on November 07, 2018. The Landlord had 15 days from December 24, 2018 to repay the security deposit or claim against it pursuant to section 38(1) of the *Act*. I note that it is irrelevant that the forwarding address provided was incorrect. The Tenants provided a forwarding address and that triggered section 38(1) of the *Act*. The Landlord filed the Application January 08, 2019, within the time limit. The Landlord complied with section 38(1) of the *Act*.

Drapery Cleaning

Section 37 of the *Act* states:

(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...

I accept based on the Condition Inspection Report that the drapes were in good condition and clean at move-in, except for a stain as noted on the Condition Inspection Report. I accept based on the initialled Condition Inspection Report that the drapes were in fair condition and dirty upon move-out. I accept that the Tenants breached section 37 of the *Act* by leaving the drapes dirty.

I accept that the drapes had to be cleaned. Based on the invoice, I accept that this cost \$58.80. I find this amount to be reasonable and award the Landlord this amount.

Carpet Cleaning

I accept based on the Condition Inspection Report that the carpet was in good condition and clean at move-in, except for a stain by the bedroom. I accept based on the initialled Condition Inspection Report that the carpet was in fair condition and dirty upon move-out. I accept that the Tenants breached section 37 of the *Act* by leaving the carpet dirty.

I accept that the carpet had to be cleaned. Based on the invoice, I accept that this cost \$94.50. I find this amount to be reasonable and award the Landlord this amount.

Liquidated damages

The Tenants agreed at the hearing, and on the Breaking Lease Form, to pay the Landlord this amount with the security deposit.

December rent

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 3 addresses claims for rent and states at page 1:

Section 44 of the Residential Tenancy Act...set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

The parties agreed the Tenants gave the keys to the rental unit back to the Landlord December 24, 2018. I find the Tenants had possession of the rental unit until this date. The Tenants testified that they tried to give the keys back earlier; however, they were unable to point to any evidence in support of this. In the absence of evidence to support this, I do not accept that the Tenants tried to give the keys back earlier.

I find the Tenants are obligated to pay rent for December given they remained in possession of the rental unit until December 24, 2018.

Further, I accept that the Tenants breached section 45 of the *Act* by ending the fixed term tenancy early. I do not find the bed bug issue relevant as I am not satisfied the Tenants complied with section 45(3) of the *Act* in relation to ending the tenancy early.

I am satisfied the Landlords lost rent for December because of the breach. I am satisfied the Landlord mitigated their loss by attempting to re-rent the unit. I am satisfied the Landlord is entitled to recover rent up until December 29, 2018. I award the Landlord the amount sought.

October and December late fees

Section 7(1)(d) of the *Regulations* states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

Late fees are set out in term 3.03 of the tenancy agreement.

The Tenants agreed to pay the late fee for October.

I accept that the Tenants paid rent late by not paying rent for December but remaining in possession of the rental unit. I find the Landlord is entitled to recover this fee.

Filing fee

Given the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following:

1	Drapery Cleaning	\$58.80
2	Carpet Cleaning	\$94.50
3	Smart Card (laundry card)	-
4	Liquidated damages	\$450.00
5	December rent	\$1501.45
6	October and December late fees	\$50.00
7	Filing fee	\$100.00
	TOTAL	\$2,254.75

The Landlord can keep the security deposit towards the amount owed pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for \$1,452.25.

Conclusion

The Landlord is entitled to \$2,254.75 in compensation. The Landlord can keep the \$802.50 security deposit. The Landlord is issued a Monetary Order for \$1,452.25. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: May 30, 2019

Residential Tenancy Branch