



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 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, compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant and a law student for the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. However, during the hearing it was noted that the Tenant had not received a copy of the documentary evidence regarding standard rates for cleaning charged by the Landlord. Therefore, this evidence will not be included in this decision as I am not able to establish that it was served to the Tenant as required by the *Residential Tenancy Branch Rules of Procedure*.

The Landlord confirmed receipt of the Tenant’s evidence. The Landlord also confirmed that both Tenants were served with packages at the same address as this was the address provided on the move-out inspection as the forwarding address. The Landlord provided the tracking number for the package served to the Tenant who was not present at the hearing. This tracking number is included on the front page of this decision. As the Landlord testified that both packages were delivered, and the address the packages were sent to was noted on the move-out inspection as the Tenants’ forwarding address, I find that both Tenants were duly served in accordance with Sections 88 and 89 of the *Act*, despite only one tenant being present for the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 authorized 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 parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on July 1, 2018 and was for a fixed term set to end on June 30, 2019. Rent of \$1,700.00 was due on the first day of each month and a security deposit of \$850.00 was paid at the outset of the tenancy. The Landlord confirmed that they are still in possession of the full security deposit amount.

The parties also agreed that the Tenant moved out on January 31, 2019 with the move-out Condition Inspection Report completed on February 1, 2019.

The Landlord has claimed a total of \$4,385.33 which includes claims for liquidated damages, cleaning and unpaid rent. While the Landlord initially applied for unpaid rent for February and March 2019 in the amount of \$1,700.00 each month, he amended this at the hearing. The Landlord stated that they were able to find a new tenant for the

rental unit beginning on February 12, 2019 and therefore are now seeking the pro-rated amount of \$637.50 for the period of February 1 to February 11, 2019.

The parties were able to reach an agreement regarding the Landlord's claims for liquidated damages and cleaning which will be outlined in the 'Settlement Agreement' section below.

As the parties did not come to an agreement regarding the Landlord's claim for unpaid rent and for the recovery of the filing fee, this will be addressed in the 'Analysis' section of this decision.

The Landlord stated that the Tenants breached the fixed-term agreement by providing notice on December 31, 2018 to end the tenancy on January 31, 2019. The Landlord submitted a copy of the notice to end tenancy into evidence.

The Landlord testified that they provided a form to the Tenants to sign which states that a fixed term agreement is in place and the Tenants may still be responsible for any lost revenue. The Landlord submitted this form into evidence and noted that the Tenants refused to sign it.

The Landlord stated that after receiving notice from the Tenants on December 31, 2018, they began advertising the rental unit right away. He stated that this involved online advertisements that advertised the rental unit for the same monthly rent of \$1,700.00. The Landlord stated that despite advertising right away, they were not able to find a new tenant until February 12, 2019. The Tenant submitted a copy of the advertisement which shows the unit advertised for \$1,700.00 per month.

The Tenant agreed that they provided a notice on December 31, 2018 to end the tenancy at the end of January 2019.

The Tenant and the law student for the Tenant argued that the Tenant was not occupying the rental unit after February 1, 2019 and should therefore not be responsible for rent after this date. They also stated that a liquidated damages fee was to compensate for losses that the Landlord may experienced when a fixed term tenancy agreement is ended early and as they agreed to pay this fee, the Tenants should not also be responsible for rent.

Settlement Agreement

In accordance with Section 63 of the *Act*, the parties may be offered the opportunity to settle their dispute and for the settlement agreement to be recorded in the form of a decision and/or order.

The parties reached the following agreement:

1. The Tenant agrees to pay the Landlord \$805.33 for liquidated damages.
2. The Tenant agrees to pay the Landlord \$100.00 for cleaning.
3. The parties agree that the security deposit of \$850.00 may be retained by the Landlord towards the compensation owed to the Landlord.

The parties confirmed that they were entering into this agreement voluntarily and of their own free will. It was also explained that a settlement agreement is final and binding and that a Monetary Order will be issued to the Landlord for any amount over and above the security deposit that is determined to be owed.

Analysis

The Landlord applied for liquidated damages, compensation for cleaning, and for unpaid rent. As noted above, the parties reached a settlement agreement regarding the first two claims.

Regarding the Landlord's claim for unpaid rent, Section 7 of the *Act* states the following:

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.

Upon consideration as to whether the Tenants breached the *Act*, I refer to Section 45(2) of the *Act* which states the following:

- (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.

Therefore, I find that when the Tenants provided notice on December 31, 2018 to end the tenancy, they were in breach of the *Act* by ending the tenancy prior to June 30, 2019, which was stated as the end of the fixed term agreement.

I also refer to *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent* which states that a landlord may seek compensation to put them in the same position as though the agreement was not breached, such as a claim for rent up to the period of time when the Tenant could have legally ended the tenancy.

Section 7(2) of the *Act* notes that a party claiming a loss must take reasonable steps to minimize their losses. I accept the testimony and evidence before me regarding the Landlord's attempts to re-rent the unit for the same monthly rent of \$1,700.00 and that the advertisement was posted as soon as the Tenants' notice was received. Therefore, I find that the Landlord acted reasonably to minimize their potential loss of rental income for the duration of remainder of the fixed term agreement.

I also note that while the Tenant's side argued that the liquidated damages fee was to cover potential loss from a breach of the agreement, I find this to be separate from a claim for loss of rent. As stated, the Tenants breached the *Act* by ending the fixed term tenancy early and the Landlord was unable to find a new tenant until February 12, 2019. A liquidated damages fee is a pre-estimate of the loss that would be incurred if the agreement is breached and is agreed to by both parties at the start of the tenancy. A landlord still has a right to claim for unpaid rent for the remainder of the fixed term agreement if they experience a loss of rental income due to the breach.

As I am satisfied that the Landlord experienced a loss of rental income for the period of February 1 to February 11, 2019 that was a result of the Tenants' breach of the fixed term agreement, and that the Landlord took reasonable steps to minimize their loss, I

award the Landlord the amount of \$637.50 as claimed. I note that although I calculate the daily rate for February as higher than this amount, I decline to award an amount higher than the amount that was claimed and discussed during the hearing. Therefore, I award the Landlord \$637.50 for unpaid rent.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

As per the settlement agreement regarding liquidated damages and cleaning charges, and the decision regarding unpaid rent, the Landlord is awarded a Monetary Order in the following amount:

Liquidated damages (as per settlement agreement)	\$805.33
Cleaning (as per settlement agreement)	\$100.00
Unpaid rent February 1 – February 11, 2019	\$637.50
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$850.00)</i>
Total owing to Landlord	\$792.83

Conclusion

Pursuant to Sections 63, 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$792.83** as outlined above and as part of a settlement agreement reached between the parties. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: May 30, 2019

Residential Tenancy Branch