



Dispute Resolution Services

Page: 1

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 FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for alleged damage to the rental unit and for recovery of the filing fee paid for the application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that they served the tenants with their Application for Dispute Resolution and Notice of Hearing by registered mail on June 4, 2019. The landlord provided the Canada Post receipts showing the tracking numbers of the registered mail for each tenant, which are listed on the style of cause page of this Decision.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this tenancy began on January 1, 2019, for a fixed term ending on December 31, 2019, that monthly rent was \$1,750.00, and that the tenants paid a security deposit of \$875.00.

The landlord submitted that the tenants vacated the rental unit April 22, 2019, breaching the fixed term tenancy agreement.

The landlord has retained the tenants' security deposit, having made this claim against it.

The landlord's monetary claim is \$1,382.83, comprised of liquidated damages of \$805.33 and damage to a floor in the rental unit, for \$577.50.

The landlord's relevant evidence included photos of the damaged floor, an invoice for the repair to the damaged floor, and a condition inspection report ("CIR") notating damage to the floor. I note the CIR was signed by tenant, GC, at the move-out inspection date.

In support of their application, the landlord submitted that the tenants damaged the floor during the tenancy, leaving a stain, and that sanding was required to repair the damage.

In support of their claim for liquidated damages, the landlord submitted that as the tenants ended the tenancy prior to the end of the fixed term, they are entitled to the amount agreed upon by the tenants in the written tenancy agreement, referring to clause 5. This clause also shows the tenants initialed this paragraph.

The landlord submitted that the amount of \$805.33 was a calculation of the average historical amount that the landlord expends in the costs to re-rent.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

As to the costs claimed by the landlord associated with floor damage, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the undisputed evidence of the landlord and the documentary evidence showing floor damage, along with costs to remediate the floor damage, that the tenants damaged the floor beyond normal wear and tear.

As a result, I find the landlord is entitled to a monetary award of \$577.50 for repair to the damaged floor.

As to the landlord's claim for liquidated damages, Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of 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.

In this case, I find the written and signed tenancy agreement required the tenants to pay a liquidated damages fee of \$805.33 in the event the tenants ended the fixed term tenancy prior to the date mentioned, here December 31, 2019. I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant is responsible for paying the liquidated damages fee of \$805.33 and that the landlord has established a monetary claim in that amount.

I grant the landlord recovery of their filing fee of \$100.00, due to their successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord a monetary award of \$1,482.83, comprised of \$577.50 for repair to the damaged floor, liquidated damages fee of \$805.33, and the filing fee of \$100.00.

At the landlord's request, I direct them to retain the tenants' security deposit of \$875.00 in partial satisfaction of their monetary award of \$1,482.83.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$607.83.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$875.00, and they have been awarded a monetary order for the balance due, in the amount of \$607.83.

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: September 9, 2019

Residential Tenancy Branch