



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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,708.01 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's assistant property manager ("**DS**") and comptroller ("**SE**") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that DS, SE, and I were the only ones who had called into this teleconference.

DS testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on August 3, 2019. DS provided a Canada Post tracking number (reproduced on the cover of this decision) confirming this mailing. I find that the tenant was deemed served with this package on August 8, 2019, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- retain all of the tenant's security deposit in partial satisfaction of the monetary order requested;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$2,638.57; and
- recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting March 1, 2014. Monthly rent is \$1,429, excluding electricity, and is payable on the first of each month. The tenant paid the landlord a security deposit of \$617.50. On June 14, 2019, the tenant agreed in writing that the landlord could retain the security deposit.

On April 30, 2019, the tenant served a Notice of Intent to Vacate form on the landlord, setting his moveout date as the last day of May 2019. DS testified that the tenant continued to move items out of the rental unit until June 4, 2019 but did not pay any rent for the month of June 2019.

The landlord claims damages as follows:

Rent (June 1 to 4, 2019)	\$249.33
Unpaid Electrical	\$20.76
Drapery Cleaning	\$123.90
Labour (packing/moving abandoned items)	\$300.00
Furniture removal	\$500.00
Replace carpet	\$1,024.58
Labour (cleaning fridge and range hood)	\$75.00
Labour (cleaning suite and garbage removal)	\$345.00
Total	\$2,638.57

DS testified that the tenant left the rental unit in very poor condition at the end of the tenancy. The tenant left a large number of items of clothing, household goods, furniture and electronics in the rental unit. The landlord submitted over 60 photographs showing the state of the rental unit at the end of the tenancy, with each containing several items left behind by the tenant.

DS testified that the tenant had failed to adequately clean the rental unit and did not clean the drapes or the carpet. The landlord submitted photos of the rental unit which show that significant cleaning throughout the rental unit was needed once the tenant's abandoned possessions were removed.

DS testified that the carpets were significantly damaged beyond the standard of ordinary wear and tear at the end of the tenancy. She characterized the carpet's condition throughout the rental unit as "totally trashed". SE testified that the carpets "could not be cleaned". She testified that the tenant had an unauthorized pet in the rental unit, which likely caused much of the damaged.

The landlord submitted photos of the carpet showing it to be significantly stained in multiple areas throughout the rental unit, to be worn through in another, and (in one instance) to have a "run" in the fabric.

DS testified that the carpet was brand new as of January 22, 2014 (slightly more than three months prior to the start of the tenancy). The landlord entered accounting recordings showing the date of installation.

The landlord had the carpet throughout the rental unit replaced at a cost of \$2,211.54. It submitted a copy of an invoice for the replacement of the carpet into evidence evidencing this amount. DS acknowledged that the carpet that was removed was a little more than halfway through its useful lifespan (10 years, as set out in Policy Guideline 40), and that the landlord is not entitled to recover the full amount of the carpet's replacement cost. The landlord submitted an amortization calculation sheet on which it calculates that the permissible amount charged to the tenant for the replacement of the carpet is \$1,024.58.

DS testified that the landlord hired several individuals to clean the rental unit and to remove the tenant's abandoned property, including furniture. The landlord submitted timesheets of these individuals which support the amounts claimed for labour listed

above, and price sheet which quotes the cost for removing furniture at \$100 per item. The photos show at least five items of abandoned furniture in the rental unit.

DS testified that the tenant failed to clean the drapes prior to leaving the rental unit, as obligated by the tenancy agreement, and that the landlord hired a company to clean them, costing \$123.90. The landlord provided an invoice supporting this amount.

The landlord claimed that, at as of June 3, 2019, the tenant owed the landlord \$20.76 in unpaid electric utilities. The landlord submitted an account information ledger into evidence showing this amount.

Analysis

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Rule of Procedure Rule 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove on a balance of probabilities that the tenant breached the Act or tenancy agreement, that it suffered a monetary loss as a result, and that it acted reasonably to minimize its losses.

Overholding – June 2019

Based on the testimony of DS and my review of the documentary evidence, I find that the tenant gave written notice on April 30, 2019 to end the tenancy on May 31, 2019. As such, per section 45 of the Act, I find that the tenancy ended on May 31, 2019. I accept DS's testimony that the tenant did not vacate the rental unit until June 4, 2019. I find that this is a breach of the tenancy agreement.

Section 57(3) of the Act states:

What happens if a tenant does not leave when tenancy ended

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Policy Guideline 3, in part, states:

Section 44 of the *Residential Tenancy Act* [... sets] out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to [this] 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.

The landlord claims \$249.33 in overholding rent from the tenant. I am uncertain as to how the landlord arrived at this amount.

For June 2019, the *per diem* amount of rent is \$46.10 (\$1,429/31 days). As such, I find that the landlord suffered loss in the amount of \$184.40 as a result of the tenant's overholding (\$46.10 x 4 days). I order that the tenant pay the landlord this amount.

Cleaning and labour costs

Based on the testimony of DS and SE, and the photographs submitted into evidence, I find that the rental unit was left in a state that required extensive cleaning at the end of the tenancy.

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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 find that the tenant has failed to comply with this section of the Act.

Based on my review of the documentary evidence, I accept that the tenants suffered monetary loss stemming from this breach as follows:

Labour (packing/moving abandoned items)	\$300
Labour (Furniture moving)	\$500
Labour (cleaning fridge and range hood)	\$75
Labour (cleaning suite and garbage removal)	\$345
Total	\$1,220

I find that these expenses were reasonably incurred, and that the landlord acted reasonably to minimize its loss. I order that the tenant pay the landlord \$1,220 in compensation for this loss.

Drape Cleaning

I accept DS's testimony that the tenant failed to clean the drapes prior to vacating the rental unit.

Policy Guideline 1 states:

INTERNAL WINDOW COVERINGS

5. The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

As such, I find that the tenant's failure to clean the drape constitute a breach of section 37 of the Act. I find that the landlord incurred a monetary loss of \$123.90 as a result of this breach (as supported by the documentary evidence), and that it was reasonably incurred. I order that the tenant pay the landlord \$123.90 in compensation for this loss.

Utilities

I find that electricity is not included in the monthly rent, and I accept CS's testimony that the landlord suffered a monetary loss of \$20.76 as the result of the tenant not paying the full balance of the electricity bill. I find that the tenant must compensate the landlord for this loss.

Carpet

I accept DS's and SE's uncontroverted evidence (supported by photographs) that the carpet was damaged beyond the level of ordinary wear and tear and that the replacement of the carpet was necessary.

Section 32(3) of the Act states:

Landlord and tenant obligations to repair and maintain

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that by damaging (and failing to repair) the carpet, the tenant breached this section of the Act.

Based on DS's testimony and the supporting documentation, I accept that the landlord suffered loss as the result of this breach. I find that the damage to the carpet spanned many rooms, and that it was therefore reasonable for the landlord to replace the carpet in the entire rental unit. I find that the landlord's calculations for the reduced amount of compensation for the replacement carpet based on the useful life of the damaged carpet are accurate.

Accordingly, I find that the landlord's loss as a result of the tenant's breach of section 32(3) of the Act to be \$1,024.58. I order that the tenant pay the landlord this amount.

Security Deposit and Filing Fee

As the landlord has been successful in its application, I order that the tenant reimburse it the filing fee for this application (\$100).

As the tenant agreed that the landlord could retain his security deposit (\$617.50), I find that this amount should be offset against the monetary awards made in this decision.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$2,056.14, representing the following:

Rent (June 1 to 4, 2019)	\$184.40
Unpaid Electrical	\$20.76
Drapery Cleaning	\$123.90
Labour (packing/moving abandoned items)	\$300.00
Labour (Furniture moving)	\$500.00
Replace carpet	\$1,024.58
Labour (cleaning fridge and range hood)	\$75.00
Labour (cleaning suite and garbage removal)	\$345.00
Filing Fee	\$100.00
Security Deposit credit	-\$617.50
Total	\$2,056.14

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: November 19, 2019

Residential Tenancy Branch