



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

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent; damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

The landlord's representatives appeared at the hearing and were affirmed. There was no appearance on part of the tenant. Since the tenant did not appear for the hearing, I explored service of the hearing materials upon the tenant.

The landlord's agent submitted they had obtained a Substituted Service Order authorizing the landlord to serve the tenant via email. The landlord provided a copy of the email sent to the tenant on June 11, 2021 containing the hearing package and testified the tenant did respond to the email on June 21, 2021. I ordered the landlord to produce a copy of the response received from the tenant, which the landlord's agent did during the hearing. I was satisfied the tenant was served in accordance with the Substituted Service Order and I continued to hear from the landlord without the tenant present.

During the hearing, I heard the landlord was issued an Order of Possession and Monetary Order for unpaid rent for March 2021 under the Direct Request procedure on April 27, 2021 (file number referenced on the cover page of this decision) and the landlord took possession of the rental unit and the tenant's personal property on May 6, 2021. Discussion ensued surrounding a landlord's obligations and limitations concerning enforcement of an Order of Possession and the landlord decided to limit its claim to loss of rent for the month of April 2021. The application was amended accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to recovery of loss of rent for the month of April 2021 from the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on January 23, 2020 and the tenant paid a security deposit of \$762.50. The tenant was required to pay rent of \$1525.00 on the first day of every month.

The tenant failed to pay rent for the month of March 2021 and the landlord was provided an Order of Possession and Monetary Order for unpaid rent for March 2021 under the Direct Request procedure on April 27, 2021. The landlord took possession of the rental unit and removed the tenant's possession from the rental unit on May 6, 2021. During the hearing, I informed the landlord's agents the proper procedure, and limitations, for regaining possession of the rental unit.

The landlord requested recovery of loss of rent for April 2021 to reflect the tenant continued to hold possession of the rental up to May 6, 2021 and his personal property was in the rental unit throughout the month of April 2021.

Documentary evidence provided for this proceeding included a copy of: the tenancy agreement; the 10 Day Notice; the decision and Orders issued on April 27, 2021 under the Direct Request procedure; and, various emails exchanged with the tenant.

Analysis

As provided in the decision issued by an Adjudicator on April 27, 2021 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure, the tenancy legally ended on March 25, 2021.

The landlord has already been provided a Monetary Order for unpaid rent for March 2021 and it is before me to determine whether the landlord is entitled to recover loss of rent from the tenant for the month of April 2021.

I was provided unopposed evidence that the tenant continued to hold possession and had his personal property in the rental unit after the tenancy ended on March 25, 2021 and throughout the month of April 2021. Therefore, I find the tenant's failure to vacate the rental unit when required caused the landlord to suffer loss of rent for April 2021 and I grant the landlord's request to recover \$1525.00 from the tenant for the month of April 2021. I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's \$762.50 security deposit in partial satisfaction of the award for loss of rent.

In light of all of the above, the landlord is provided a Monetary Order in the net amount of \$862.50 to serve and enforce upon the tenant.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$862.50 for loss of rent for April 2021 and recovery of the filing fee.

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 26, 2021

Residential Tenancy Branch