



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 **MNRL-S, MNDCL-S, FFL**

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail on May 27, 2021 sent to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on June 1, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

May 27, 2021 RN 453 452 241 CA

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the security deposit for this tenancy?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on February 1, 2021 and was scheduled to end on January 31, 2022. Monthly rent was \$1,900.00 payable on the first of each month. A security deposit of \$950.00 was paid at the start of the tenancy and is still held by the landlord. The signed tenancy agreement provides that a liquidated damage fee of \$805.33 applies if the tenant ends the tenancy before its full term.

The tenant gave written notice to end this tenancy and a forwarding address on April 20, 2021 and vacated the rental unit by April 30, 2021. The parties participated in a move-out inspection and prepared a condition inspection report, but the tenant did not agree to any deductions from their deposit and did not sign the report. The tenant did not pay rent as required under the tenancy agreement on May 1, 2021 nor did they pay the liquidated damage fee.

The landlord says they took steps to clean, advertise and find a new occupant for the rental unit but they still incurred a rental income loss for the month of May 2021 due to the short notice provided by the tenant. The landlord now seeks a monetary award in the amount of \$2,705.33 representing the liquidated damage fee and the rent payable for May 2021.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In the present case I accept the evidence that the tenant gave written notice to end the tenancy on April 20, 2021. I am satisfied with the landlord's testimony that they took reasonable steps to mitigate their rental income losses by seeking a new occupant but still incurred rental income loss for May 2021. I find that the landlord took reasonable measures by cleaning the rental unit, advertising, interviewing occupants and entering into a new tenancy agreement. I find that despite their efforts the landlord incurred some losses due to the breach by the tenant. Therefore, I issue a monetary award in the amount of \$1,900.00 as against the tenant for damages to the landlord resulting from their breach of the *Act* and agreement.

The landlord seeks liquidated damages in the amount of \$805.33. I am satisfied that this figure represents a genuine pre-estimate of the loss at the time the tenancy agreement was entered as outlined in Residential Tenancy Policy Guideline 4. I am satisfied that the clause contained in the tenancy agreement is a valid liquidated damage clause and not a penalty. As such, I find the landlord is entitled to a monetary award in the amount of \$805.33 as set out in the agreement, and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,855.33, representing the liquidated damages, loss of rental income and filing fee less the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: November 12, 2021

Residential Tenancy Branch