



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, MNRL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenants Evidence

At the outset of the hearing, the tenant advised that he uploaded his evidence to the RTB website but didn't serve the landlord. It was explained to the tenant, that since he didn't serve any of his documentary evidence to the landlord, that evidence could not be considered. The tenant indicated that he understood and the hearing proceeded and completed on that basis.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background, Evidence

The landlord's agent testimony is as follows. The one-year fixed term tenancy began on November 1, 2020 but ended early on June 30, 2021. The tenant was obligated to pay \$1800.00 per month in rent and at the outset of the tenancy the tenant paid a \$900.00 security deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty at move out. The agent testified that three hours of cleaning was required to clean the unit at a cost of \$45.00 per hour X 3 hours = \$130.00. The agent also seeks the liquidated damages of \$805.33 as per their tenancy agreement. The agent testified that the unit was not rented again until July 20, 2021. The agent is seeking the prorated rent of \$1103.14 for July 1- 19, 2021. The agent originally requested \$200.00 for the tenant overholding the unit but abandoned that claim during the hearing.

The tenant gave the following testimony. The tenant testified that he agrees with the liquidated damages claim. The tenant testified that he does dispute the cleaning as he felt he cleaned the unit sufficiently. The tenant testified that he disputes the prorated rent as the landlord's advertisements listed two units for rent, one for \$1825.00 per month and the other for \$1850.00 per month. The tenant testified that the landlord should have advertised at the same amount to rent it quickly and not lose any rent.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Liquidated damages

The tenant agrees to this charge, accordingly; I find that the landlord is entitled to \$805.33.

Loss of Rent

The tenant acknowledged that he ended the tenancy prematurely. The agent provided a detailed breakdown of the steps involved in re-renting the unit. The agent stated that the tenant was incorrect, and that the unit was advertised and rented for the same amount as he was paying. The agent testified that the company has an aggressive marketing plan to rent units quickly but were unable to rent the unit for July 1, 2021. The tenant did not provide sufficient evidence to warrant or justify an early end to their tenancy. The landlord provided sufficient evidence to show that the loss was a result of the tenants' actions and that they attempted to rent the unit as quickly as possible to mitigate their loss, accordingly; I find that the landlord is entitled to \$1103.14.

Cleaning

The landlord provided sufficient documentation and photographs to show that the unit was not left sufficiently clean and that the amount sought is commensurate with the scope of cleaning, accordingly; I grant the landlord \$135.00 for cleaning.

Although the landlord requested the return of the filing fee, they did not include it as part of their application, accordingly; I am unable to grant that request and they must bear that cost.

Conclusion

The landlord has established a claim for \$2043.47. I order that the landlord retain the \$900.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1143.47. This order may be filed in the Small Claims 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: January 24, 2022

Residential Tenancy Branch