



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 MNDL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order of \$1,738.95 for cleaning expenses and unpaid utilities, as well as an order to retain the security deposit in partial satisfaction of its claim. The Landlord also requested an order for payment of the filing fee and postage charges.

The Landlord’s agents appeared for the scheduled hearing. The Tenants did not call into the teleconference line, although I left the line open for twelve minutes. 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 the Landlord’s agents and I were the only ones who had called into this teleconference.

I find that the notice of hearing was properly served by registered mail on December 22, 2017 on both parties and that evidence was properly submitted. The evidence provided showed that two packages were sent out to the forwarding address provided, and that both packages were “delivered” and signed for by a person authorized, as indicated with the provided tracking numbers. The Landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and participants were given an opportunity to ask any questions about the process. The Landlord asked to amend their claim to withdraw the request for \$300.00 for unpaid utilities as those have since been paid. The hearing continued for the balance of the claim for \$1,538.95, which includes the filing fee.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation and damages, pursuant to section 67 of the *Residential Tenancy Act* ("Act")?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began in May of 2015 and ended November 30, 2017; the Tenants did not give notice and moved out the same day they advised the Landlord. The amount of rent was initially \$1,570.00, later increased over time to \$1,674.00 per month as of December 1, 2017, with proper advance notice. The security deposit was \$785.00. A move-in inspection report was completed at the start of the tenancy. The terms of the tenancy agreement include an acknowledgment by both parties as to the expected costs of cleaning; this was initialled by all parties and submitted into evidence.

A forwarding address was provided by the Tenants in the Condition Inspection Report signed on November 30, 2017, which was also submitted into evidence. The Tenants did not agree with the findings in the report, but gave no written reasons. The Landlord brought this Application on December 15, 2017, within the 15-day deadline.

The Landlord makes the following specific claims and submissions:

- Carpet cleaning of \$131.25, along with a receipt;
- Drapery cleaning of \$117.60, along with a receipt;
- Lost rent revenue from Dec 1 – 22 in the sum of \$1,188.00, due to lack of notice from Tenants to end tenancy; the Landlord claims it mitigated its losses by re-renting at the earliest possible time, mid-month;
- Filing fee of \$100.00 and postage of \$2.10 with receipts.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. I have determined that there was sufficient notice of the hearing and that the hearing should continue in the absence of the Tenants.

Either party to a tenancy may bring an application for damages under section 67 of the Act:

67 *Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I have reviewed the photographs, the condition inspection reports and the receipts submitted into evidence and find that the Landlord's undisputed evidence has proven its claim for the following, on a balance of probabilities:

Item	Amount
Loss Rent (Prorated Dec 1 – 22, 2017)	\$1,188.00
Carpet Cleaning	131.25
Drapery Cleaning	117.60
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,536.85

In reaching this conclusion, I have considered the fact that the Landlord mitigated its losses by re-renting the suite as quickly as possible and only claimed prorated rent for December, 2017. As the Landlord was successful in its claim, I awarded the filing fee under section 72, but I am not allowing the postage which is a cost of doing business.

The Landlord has applied to retain the security deposit of \$785.00 in partial satisfaction of this award. I find that the Landlord applied for the security deposit in compliance with section 38 of the Act and that the move-in inspection and move-out inspections were done in a timely manner; accordingly, I am authorizing the Landlord to retain the security deposit and will issue a monetary order for the balance of **\$751.85**. The Tenants are jointly and severally liable for this amount.

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord shall retain the security deposit of \$785.00. I further grant an Order for payment of \$751.85 to the Landlord by the Tenants forthwith.

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: June 13, 2018

Residential Tenancy Branch