



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on February 4, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's application and evidence and did not take issue with the service of this package. I find the Tenant was sufficiently served with the Landlord's application and evidence. The Tenant did not submit any evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?

- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties agreed that monthly rent was \$2,398.00, was due on the first of the month, and it was a month-to-month tenancy. The Landlord holds a security deposit totalling \$1,125.00.

The Landlord is seeking to recover October 2019 rent in the amount of \$2,398.00 because the unit sat empty for that month while the Landlord searched for a replacement tenant. The Landlord found a replacement tenant for December 1, 2019, and although the unit also sat empty for November 2019, he is only seeking to recover rent for October.

The Landlord stated that the Tenant dropped off his written Notice to End tenancy (provided into evidence), to their office on September 6, 2019, which indicated he wanted to end the tenancy as of the end of September 2019. The Tenant stated he told the landlord verbally before that, but did not dispute this was the first time he put his intentions to end the tenancy in writing. The Tenant stated he moved out near the end of September and a move-out inspection was done on September 30, 2019.

The Landlord stated that immediately (same day) after they got the Tenant's written notice, they reposted the ad on several rental sites. The Landlord stated they got several inquiries and had a few showings over the following weeks, but nothing materialized. The Landlord did not change the price on the posting until the end of October 2019, after a few of the showings didn't pan out.

The Landlord stated that they re-rented to unit sometime in November (he could not recall the exact date), starting December 1, 2019, and although they lost two months rent, they are only wanting October to be paid by the Tenant.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim. Efforts to minimize the loss must be "reasonable" in the circumstances.

[...]

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Section 45(1) of the *Act* requires a Tenant to end a month-to-month (periodic) tenancy by giving the Landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2019, the Tenant would have needed to provide his notice to end this tenancy before September 1, 2019. Section 52 of the *Act* requires that a Tenant provide this notice in writing.

In this case, the undisputed evidence shows that the Tenant did not provide written notice until September 6, 2019, for the end of the month, which I find breached section 45 of the *Act*. I accept the Landlord suffered a loss of rent as a result of this short notice. I find the Landlord took sufficient steps to mitigate the loss: he reposted the ad the same day the Tenant gave notice, at the same price the Tenant was paying. The Landlord stated he posted the ad on multiple sites, and had several showings over the following weeks, none of which ended up taking the suite. I find the Landlord sufficiently mitigated

his loss, and given the Tenant's breach of section 45 of the Act, I find he is liable for October rent, in full. I award the Landlord \$2,398.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Lost Rent	\$2,398.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,498.00
LESS: Security and Pet Deposit	\$1,125.00
Total Amount	\$1,373.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,373.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: February 04, 2020

Residential Tenancy Branch