



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

Introduction

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

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The landlord's agents DS and SE attended for the landlord. DS ("landlord") testified as the main agent for the landlord in this hearing. DI appeared for the tenants. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on package on October 23, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. The DI confirmed receipt of these materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on October 28, 2020, 5 days after mailing. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on December 1, 2019, and was to end on November 30, 2020. The tenants moved out before the end of the fixed-term tenancy on September 30, 2020 as they were on a waiting list for subsidized housing. Monthly rent was set at \$1,810.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$905.00, which they still hold.

The landlord provided the following list of damages and losses for their monetary claim.

Item	Amount
Loss of Rent October 1 - 14, 2020	\$817.46
Liquidated Damages	450.00
Unpaid Utilities	151.54
Drapery Cleaning	85.05
Carpet Cleaning	100.00
Painting (reduced)	250.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,954.05

The landlord was able to mitigate their losses and re-rent the suite for October 15, 2020. The landlord is seeking a monetary order for loss of rental income for October 1 to 14, 2020. The landlord is also requesting a liquidated damages fee in the amount of \$1,275.00 as set out in the tenancy agreement which is to cover “administration costs of re-letting the Premises”.

The landlord is also seeking a monetary order for the unpaid utilities. The landlord testified that they were willing to reduce the monetary claim by this amount if the tenants provided proof of payment, which the landlord states has not been done.

The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition. The landlord provided a copy of the move-in and move-out inspection reports, invoices, and photos in support of their claim. The landlord submits that the tenants left the suite in poor condition, and that the drapery and carpet were in

need of cleaning. The landlord also submits that the walls were very scuffed, dirty, and chipped, with some sort of streaking or residue on them. The landlord submits that the suite was fully painted on October 7, 2019, shortly before the tenants had moved in. The landlord provided an invoice in their evidentiary materials dated October 7, 2019 for painting. The landlord reduced the tenant's portion of \$787.50 to \$250.00 in consideration of the financial hardship the tenants faced.

The tenant DI attended the hearing and testified that they were disputing the landlord's entire monetary claim. DI testified that his family had been waiting 5 years for placement in subsidized housing, and had no choice but to end the tenancy early. DI testified that he did not feel the landlord's claims were fair considering their financial situation, and the fact that they only resided there 10 months. DI testified that he felt that the suite was left in reasonably clean condition, and had paid for cleaning before they had moved out.

DI also listed several issues with the tenancy, including the level of noise, issues with the windows, other tenants smoking, need for repairs, and the fact that the building shook easily.

Analysis

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Although the tenants provided an explanation for why they had to end the tenancy before the end of the fixed term, I find that the tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution have been filed by the tenants. The tenants moved out earlier than

the date specified in the tenancy agreement. I find that the landlord made an effort to mitigate the tenants' exposure to the landlord's monetary losses as is required by section 7(2) of the Act, and were able to find new tenants for October 15, 2020. I, therefore, allow the landlord's monetary claim for loss of rental income for the month for October 1-14, 2020 in the amount of \$817.46.

I must now consider whether the landlord is entitled to the \$450.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...

I have reviewed the written tenancy agreement submitted by the landlord. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenants would be responsible for the amount claimed by the landlord as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with the administrative costs of finding and screening a new tenant in the

event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlord's monetary claim.

Although the landlord agreed to reduce the utility claim in the event that the tenants could show that they had paid the outstanding utilities, I find that at the time of the hearing, the tenants have not done so. Accordingly, I find that the landlord provided sufficient evidence to support that the tenants have failed to pay \$151.54 in outstanding \$6,794.46 utilities. Accordingly, I allow this portion of the landlord's monetary claim.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the home. I find that the landlord provided detailed evidence to support the losses claimed, including a copy of the move-in and move-out inspection reports, invoices for the losses, and photos to support the losses claimed. Although the tenant DI provided testimony to the contrary, I do not find his testimony to be credible or convincing. The tenants did not submit any evidence to support that the home was left in reasonably clean and undamaged condition. However, the landlord had provided evidence to support their claims. Although the tenant DI testified of numerous issues they experienced during this tenancy, the tenants did not file any applications that were crossed with the landlord's. Accordingly, in the absence of any applications by the tenants in this hearing, I make no findings on the merits of the tenants' claims. I find that the landlord supported the value of their losses claimed. Accordingly, I allow the landlord's monetary claims for cleaning and painting of the suite.

The landlord continues to hold the tenants' security deposit of \$905.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$905.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recover the filing fee from the tenants.

Conclusion

I issue a Monetary Order in the amount of \$1,049.05 in the landlord's favour under the following terms which allows a monetary award for money owed, as well as the losses associated with the tenants' failure to comply with the *Act*.

Item	Amount
Loss of Rent October 1 - 14, 2020	\$817.46
Liquidated Damages	450.00
Unpaid Utilities	151.54
Drapery Cleaning	85.05
Carpet Cleaning	100.00
Painting (reduced)	250.00
Filing Fee	100.00
Less Security Deposit Held	-905.00
Total Monetary Order	\$ 1,049.05

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: February 8, 2021

Residential Tenancy Branch