Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, the tenant confirmed that he had received the landlord's evidence. The tenant did not submit any documentary evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. 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 monetary compensation as claimed?

Background and Evidence

The tenants began occupying the rental unit on April 1, 2009. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $997.50 and a pet deposit of $997.50. The latest tenancy agreement between the parties commenced on April 1, 2012, and was to be for a fixed term ending March 31, 2013. This tenancy agreement shows monthly rent in the amount of $2040. The tenancy ended on November 30, 2012.

Landlord's Evidence

The landlord submitted a tenant ledger showing that at the end of the tenancy, the tenants owed the landlord $2290 in unpaid rent and an NSF fee of $25. The landlord also claimed $500 in liquidated damages, as per the tenancy agreement. The landlord

stated that the liquidated damages amount is based on a pre-estimate of the costs of re-renting, including the costs to close out a file early, and advertising and showing the unit.

Tenant's Response

The tenant's response to the landlord's claim was that the rent was in arrears because in mid-December 2011 there was a flood in the basement and the tenant asked the landlord to put proper drain tile around the house but the owner did not want to. In January or February of 2012 the tenants received a notice of rent increase, but they did not want to renew their lease based on a rent increase. The landlord verbally agreed that the rent would remain at $1995, but the tenant signed the new lease without amending the rental amount from $2040 to $1995. The tenants continued to pay $1995 per month, and the landlord did not notify the tenants of the alleged arrears until August 2012.

<u>Analysis</u>

Upon consideration of the evidence, I find that the landlord is entitled to the amounts claimed. The tenant did not deny that they owed rent for November 2012. I find that the tenancy agreement clearly indicates that the monthly rent was $2040, and the tenant signed the agreement, and therefore the tenants owe $250 in rental arrears for previous months when they did not pay the full rent. The landlord is also entitled to the $25 late fee claimed. The tenant did not dispute the landlord's claim for liquidated damages, and I find that the landlord has sufficiently established that the liquidated damages amount was a genuine pre-estimate, at the time of signing the tenancy agreement, of the costs of re-renting. The landlord is therefore also entitled to the liquidated damages amount of $500.

As the landlord's claim was successful, they are also entitled to recovery of the $50 filing fee for the cost of their application.

<u>Conclusion</u>

The landlord is entitled to $2865. I order that the landlord retain the security and pet deposits of $1995 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $870. 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: April 8, 2013

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Residential Tenancy Branch