



Dispute Resolution Services

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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 MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution a monetary order.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the female tenant.

While the landlord's original Application did not include that the landlord was seeking compensation for unpaid utilities but the landlord had submitted evidence confirming an outstanding balance for utilities the landlord sought to amend her Application include this charge in the amount of \$437.06.

The tenant submitted that she did not disagree with the utility charges with the exception of the charges for failing to pay the utility by June 8, 2013 in the amount of \$8.74.

As such, I have included in the decision and order as compensation for unpaid utilities in the amount of \$428.32 by agreement of both parties and I have considered the late payment charges as part of the landlord's amended Application.

In addition, the landlord had applied for compensation in the amount of \$250.00 for liquidated damages despite the clause in the tenancy agreement that identified it as \$500.00 because she believed that the tenant had agreed to the reduced amount. However, the tenant submitted at the start of the hearing that she had not made such an agreement. I allowed the landlord to amend her Application to include the full amount of liquidated damages noted in the tenancy agreement.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for late payment fees for utilities; for damage to the rental unit; for liquidated damages; for all or part of the security and pet damage deposits and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 7, 2012 for a 1 year fixed term tenancy beginning on June 1, 2012 for a monthly rent of \$1,750.00 due on the 1st of each month with a security deposit of \$875.00 and a pet damage deposit of \$875.00 paid. The tenancy agreement stipulates the tenants must vacate the property at the end of the fixed term.

The tenancy agreement included clause 5 that stipulates that if the tenants end the fixed term tenancy or are in breach of the *Act* or a material term of the tenancy agreement that causes the landlord to end the tenancy before the end of the term the tenants will pay the landlord \$500.00 as liquidated damages.

The landlord testified the amount of the liquidated damages is related to the cost of advertising; time spent in administering the end of the tenancy; and processes of showing the unit to potential tenants and paperwork involved in selecting new tenants.

The tenant submits that because they gave the landlord two month's notice and because there was only one month left in the tenancy agreement the landlord should not be entitled to liquidated damages, especially since they would have been required to vacate the property one month later and the landlord would have incurred these costs at that time.

The tenant submits that she had not received the utilities bills noted above until she received the evidence from the landlord and as such had no ability to pay them prior to the deadline of June 8, 2013 and she should therefore not be responsible for the payment of the late fees.

The landlord testified the tenant was provided the utility bills the same time they were provided to the Residential Tenancy Branch (RTB). The bills are stamped as received by the RTB on June 7, 2013.

The landlord seeks costs of repainting a wall in the rental unit that had been originally painted red. The parties agree the landlord gave the tenants an opportunity to go back and repaint the wall. The tenant submits they used the paint that was in storage on the property and painted the patches on the wall. The tenant submits that it is not their fault the paint colour did not match.

The landlord asserts that because the tenants only painted patches the patches showed through and the entire wall had to be repainted at a cost to the landlord of \$200.00. The landlord has provided photographic evidence of the wall and an estimate from the painter. The estimate includes a statement from the painter that patch painting is not recommended with the colour red.

Analysis

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.

In relation to the landlord's claim for liquidated damages, I find that the tenants failed to fulfil their obligations to remain in the property until the end of the fix term. While I understand the tenant's position that the landlord would have incurred these costs the following month, I find the contract specifically identifies that liquidated damages would be due if the tenants failed to fulfil the entire fixed term.

As such, I find the landlord is entitled to claim the liquidated damages as outlined in the tenancy agreement as long as the amount is determined as a genuine pre-estimate of the costs to re-rent the unit and it is not a penalty. From the testimony of the landlord I accept that the amount specified represents a genuine estimate of costs to re-rent the unit. I find the landlord is entitled to \$500.00 for liquidated damages.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the painting, I accept that when painting a colour such as red that the entire wall we need to be painted to produce an even distribution of colour over the entire surface. This is confirmed by the painter's email estimate and the photographic evidence provided by the landlord.

As such, I find the tenants failed to meet their obligations under Section 37 of the *Act* and the landlord is entitled to compensation in the amount of \$200.00 for painting the wall.

Finally, I accept the tenants did not have an opportunity to pay the utility bill prior to the due date for the payment without penalty as they had not yet received the bills from the landlord. As such, I dismiss the landlord's claim for the \$8.74 late payment charge.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,178.32** comprised of \$428.32 utilities owed; \$500.00 liquidated damages; \$200.00 for painting; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security and pet damage deposits held in the amount of \$1,750.00 in satisfaction of this claim. I order the landlord to return the balance of the deposits to the tenants and grant a monetary order in the amount of **\$571.68**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: August 16, 2013

Residential Tenancy Branch