



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:48 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package and written evidence package by registered mail on June 11, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the landlord served the above packages to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on August 1, 2012. Monthly rent was set at \$1,195.00, payable in advance on the first of each month. The tenant paid a \$597.50 pet damage deposit and a \$597.50 security deposit on July 30, 2012. The landlord has

returned \$408.65 of the deposits to the tenant. The landlord continues to hold \$786.35 from the tenant's deposits.

Before May 7, 2013, the tenant provided the landlord with a notice to end this tenancy by May 31, 2013, and prior to the scheduled July 31, 2013 end to this Residential Tenancy Agreement (the Agreement). The landlord testified that the tenant vacated the rental unit by May 16, 2013, at which time an agent of the tenant met with the landlord to conduct a joint move-out condition inspection. The landlord entered into written evidence a copy of the Agreement and a copy of the joint move-in and joint move-out condition inspection reports. The joint move-out condition inspection report of May 16, 2013 indicated that the landlord believed that cleaning was necessary at the end of this tenancy and that there had been some recent damage to a wood railing. The tenant's agent did not agree that there should be deductions to the tenant's deposits as a result of the damage that the landlord identified in the move-out condition inspection report.

The landlord's application for a monetary award of \$786.35 and Monetary Oder Worksheet of June 10, 2013, identified the following items where the landlord suffered losses or damage arising out of this tenancy:

Item	Amount
Liquidated Damages	\$500.00
Wood Repair	151.83
Cleaning	141.75
Total of Above Items	\$793.58

The landlord also entered into written evidence copies of receipts and invoices documenting the landlord's claim for repairs to the damaged railing and cleaning, as well as photographs of the condition of the rental unit at the end of this tenancy. The landlord also noted section 5 of the Agreement, in which the tenant agreed to the imposition of a \$500.00 liquidated damages clause if the tenant vacated the premises prior to the scheduled end to this tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence supplied by the landlord, I find that the landlord is entitled to a monetary award of \$500.00 for liquidated damages, as set out in section 5 of the Agreement. I also find on a balance of probabilities that the landlord's undisputed sworn testimony, written and photographic evidence is sufficient to warrant an order that the tenant compensate the landlord for the landlord's losses incurred in repairing and cleaning the rental unit after this tenancy ended. For these reasons, I find that the landlord is entitled to a monetary award of \$151.83 for the repair of damage to the rental unit and a further \$141.75 for cleaning of the rental unit.

I allow the landlord to retain the above amounts from the tenant's deposits plus applicable interest. No interest is payable. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damages, losses and the filing fee for this tenancy and to retain a portion of the tenant's deposits:

Item	Amount
Liquidated Damages	\$500.00
Wood Repair	151.83
Cleaning	141.75
Retained Value of Tenant's Pet Damage & Security Deposits (\$597.50 + \$597.50 - \$408.65 = \$786.35)	-786.35
Filing Fee	50.00
Total Monetary Order	\$57.23

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 05, 2013

Residential Tenancy Branch

