



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

By application of May 7, 2013, the landlord's property manager (referred to herein as the landlord) sought a monetary award for unpaid rent and utilities, loss of rent, damages, liquidated damages, late fees and recovery of the filing fee for this proceeding. The landlord also sought authorization to retain the tenants' security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on June 12, 2013 to each of the tenants individually, they did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Background, Evidence and Analysis

This tenancy began on February 15, 2013 under a fixed term rental agreement set to end on January 31, 2014. Rent was \$1,550 per month and the landlord holds a security deposit of \$775 paid on January 27, 2013.

During the hearing, the landlord gave evidence that the tenants had given notice by email in mid-April that they would be leaving the rental unit at the end of the month.

The tenants had complained of mold in the rental unit, but the landlord had the rental unit inspected on May 7, 2013 by a restoration company that found no mold in the rental unit. Their report did note a musty odour upstairs and observed that the home had been sitting empty for a few days with the windows closed.

There was no musty odour downstairs and there was no unusual moisture content in the walls or carpeting in the upstairs.

The landlord had submitted into evidence a copy of the rental agreement, condition inspection reports, details of repairs and upgrades made by the landlord during the short tenancy and a number of receipts.

The landlord claims and I find as follows:

Unpaid rent/loss of rent for May and June 2013 - \$3,100. The landlord stated she began advertising for new tenants immediately on in mid-April on the Used Everywhere, Kijiji, and Craigslist websites as well as her corporate website but she was unable to get new tenants before July 1, 2013. The landlord also submitted a copy of a document appended to the rental agreement and signed by the tenants which clearly states that tenants will be responsible for loss of rent that results from their leaving the fixed term tenancy early. Section 7 of the *Act* provides that if a party to a rental agreement suffers a loss due to the other's breach of the legislation or rental agreement, then the noncompliant party must compensate the other for that loss. Section 45 of the *Act* provides that tenant cannot end a fixed term tenancy on any date before the end date set by the agreement. I find that the landlord's advertising met the obligation under section 7(2) of the *Act* to do whatever is reasonable to minimize the loss. This claim is allowed in full.

Late fees - \$50. The landlord requested late fees of \$25 for each of May and June 2013. However, as the tenancy had ended and the award is for loss of revenue for the two months, late fees cannot be applied. This claim is dismissed.

Liquidated damages - \$500. In addition to the provision for a liquidated damages charge of \$500 in clause 5 of the rental agreement, the landlord has provided and the tenants signed a Statement of Understanding confirming this charge on January 27, 2013. Liquidated damages must be a genuine pre-estimate of the cost to the landlord of finding new tenants if the fixed term agreement is breached. This claim is allowed.

Water bill - \$98.93. As required by the rental agreement, the tenants were responsible for utilities. The landlord submitted into evidence a water bill in the name of the tenants for \$98.93. This claim is allowed.

Garbage pickup - \$39.90. The landlord submitted an invoice for pick up and disposal of garbage left behind by the tenants. The claim is allowed.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$775). As authorized by section 72 of the *Act*, I hereby order that the landlord retain the tenants' security deposit in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Unpaid rent/loss of rent for May and June 2013	\$3,100.00
Liquidated damages	500.00
Water bill	98.93
Garbage pickup	39.90
Filing fee	<u>50.00</u>
Sub total	\$3,788.83
Less retained security deposit (No interest due)	<u>- 775.00</u>
TOTAL	\$3,013.83

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,013.83** for service on the tenants.

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 02, 2013.

Residential Tenancy Branch