



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

MND; MNSD; FF

Introduction

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to each of the Tenants, by registered mail, on August 22, 2013. The male Tenant acknowledged that both Tenants received the documents.

Issues to be Decided

- Is the Landlord entitled to liquidated damages as a result of the Tenants ending the tenancy early?
- If so, may the Landlord deduct its monetary award from the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This was a fixed term tenancy, beginning December 1, 2012, and expiring November 30, 2013. Rent was \$1,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 at the beginning of the tenancy.

The Tenants gave notice to end the tenancy on June 28, 2013, effective July 31, 2013. The Landlord was able to re-rent the rental unit effective August 1, 2013, for \$1,200.00 per month.

The Landlord seeks liquidated damages in the amount of \$500.00, pursuant to a clause in the tenancy agreement.

The Tenant testified that he found the replacement renter and that the Landlord had agreed that the lease could be assigned to the new renter. He stated that he received an e-mail from the Landlord's agent on July 25, 2013, indicating that DA had received a letter requesting transfer of the security deposit. The Tenant did not provide a copy of the e-mail in evidence. He stated that somewhere in the process, the new renter signed a new lease and gave the Landlord a security deposit. The Tenant submitted that he should not have to pay liquidated damages because the Landlord had not incurred costs in finding a new renter.

The Landlord's agent testified that there was never a discussion about subletting the rental unit or assigning the lease, but that there were discussions about the Tenant transferring the security deposit to the new renter because the new renter did not have enough money to pay the security deposit. The Landlord's agent stated that the new renter came up with the security deposit after all and signed a new lease agreement on July 16, 2013.

Analysis

Assignment is the act of transferring a tenancy agreement to a third party, who then becomes the new tenant. A sublease is a lease given to a third party by a tenant. In a sublease, the original tenant remains responsible under the tenancy agreement and becomes the landlord of the sub-tenant.

Section 34 of the Act states:

Assignment and subletting

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

I find that there is insufficient evidence that the Landlord agreed to sublet the rental unit or to assign the tenancy agreement to the new renter. The Tenants did not provide a copy of the Landlord's written consent that the Tenants could assign the lease or sublet the rental unit and the Landlord's agent disputed that any such agreement exists.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance what the damages will be in the event of the Tenants' breach of the tenancy agreement. The Landlord is not required to provide proof of actual administrative costs in re-renting the rental unit and the Tenant must pay the amount stipulated even if the actual damages are negligible. In this case, the parties pre-estimated and agreed that the liquidated damages would be \$500.00, which I find to be a reasonable amount. Therefore, I allow the Landlord's claim in the amount of \$500.00.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply a portion of the security in satisfaction of the Landlord's monetary award. The remaining security deposit in the amount of \$50.00 must be returned to the Tenants forthwith.

Conclusion

The Landlord may retain **\$550.00** from the security deposit in satisfaction of its monetary award and recovery of the filing fee. I hereby provide the Tenants with a Monetary Order in the amount of **\$50.00** for service upon the Landlord, representing return of the balance of the security deposit. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 26, 2013

Residential Tenancy Branch

