



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 MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the *Residential Tenancy Act* (the “Act”), and the tenancy agreement, for damage to and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified she served the Tenants with the Notice of Hearing and the Application for Dispute Resolution by registered mail, sent on August 13, 2013. The Landlord has provided the postal receipts in evidence. Under the Act, the Tenants were deemed served five days after mailing. However, the Tenants refused to receive the registered mail and this was noted by Canada Post on the envelopes, which were returned to the Agent for the Landlord and submitted into evidence. I find the Tenants have been duly served in accordance with the Act. I note that refusal or neglect to accept registered mail is not a ground for review under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. 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 from the Tenants?

Background and Evidence

This one year, fixed term tenancy began on April 1, 2012, and was to expire on April 30, 2013; the parties signed the tenancy agreement on March 29, 2012; the monthly rent was set at \$2,200.00, plus utilities; there were several addendums to the agreement, covering lawn and garden maintenance, tenant insurance, various rules for the property such as no smoking inside, and the consequences to breaking the lease early, and each of these were signed or initialled accordingly; and the Tenants paid a security deposit of \$1,100.00 on March 28, 2012 (the "Tenancy Agreement").

The rental unit is a 3 bed and 3 bath detached house of approximately 2,900 square feet on a lot of approximately ¼ of an acre.

In or around early December of 2012, the Agent for the Landlord became aware that the Tenants had vacated the rental unit without giving notice. The Agent for the Landlord testified that she attended the rental unit and it required significant cleaning and work. The Agent for the Landlord contacted a cleaner who removed debris and other items left behind by the Tenants. The Agent testified that, for example, the Tenants left food on the bar-b-que. In evidence the Landlord has provided an invoice from the cleaners and they state it took two workers eight hours each to clean the rental unit and pack up and remove debris left behind by the Tenants, and clean the rental unit. The Landlord claims **\$352.00** for cleaning.

I note the Agent for the Landlord conducted move in and move out condition inspection reports in accordance with the Act, although the Tenants did not attend for the move out report. It appears from the evidence that the Tenants have moved to a different province. Nevertheless, the condition inspection reports were provided in evidence. In reviewing the outgoing report during the hearing, the Agent for the Landlord testified that not one cleaned space was found in the rental unit.

The Tenants had initialled a written statement with the Agent that the propane tank at the property had been filled prior to the start of the tenancy. In evidence the Landlord provided a copy of the invoice for the propane tank at the start of the tenancy. The Landlord claims the Tenants failed to re-fill the propane tank before they vacated, and claims **\$306.14** for the replacement propane. An invoice in this amount was put into evidence.

The Landlord makes significant claims with regard to the lawn and yard maintenance. A detailed addendum to the Tenancy Agreement indicates the Tenants were to be responsible for lawn and garden maintenance. The Agent testified that it came to her attention in October of 2012 that the Tenants were not keeping up with the maintenance

of the yard. The gardening addendum provides that if the Tenants fail to maintain the yard the Landlord may have the work done and the Tenants are responsible to pay for these. The Tenants refused to pay for the work done. The Agent testified that the yard work appears to have been completely neglected by the Tenants. In evidence the Landlord has provided photographs of the yard before the Tenants moved in, after the Tenants had vacated, and of the repaired yard.

The photographs of the state of the yard after the Tenants vacated indicate many dead plantings in the flower beds, a large area of lawn that is completely dried up and dead, and many overgrown and un-weeded areas. The Landlord has submitted gardening invoices for the months of October and November in 2012, and for March, April and May of 2013. There is also an invoice from a nursery for the replacement of 10 different shrubs and plants etc. The invoices total **\$3,384.87**.

The Agent of the Landlord claims for unpaid rent for January, February, March and April of 2013, in the amount of \$11,000.00. I note this amount exceeds four months of rent at a monthly rate of \$2,200.00, which is **\$8,800.00**.

The Agent testified that she had started advertising the rental unit in December of 2012, when she became aware the Tenants had vacated the rental unit. The Agent testified she advertising continually on two well known Internet websites for rental units, as well, she advertised on her own and the corporate Agent's websites, circulated the information in a newspaper for property managers, had showings of the rental unit very early on and actively marketed the property. The Agent testified that the rental unit property is unique in that it is at the end of a road in a secluded area. The advertising for the property indicates it has views of the West Coast and of the Olympic mountains.

A lease for the rental unit was signed by new renters for May of 2013, at the same rate of rent as under the Tenancy Agreement.

The Landlord also claims for two NSF charges as the Tenants' rent cheques for January and February were not honoured by their financial institute. The Agent testified she did not try to negotiate the other post dated cheques after the first two bounced. The Landlord claims **\$50.00** for two NSF fees, in accordance with the Tenancy Agreement.

The Landlord claims for an unpaid water bill in the amount of **\$102.29**. The Tenancy Agreement required the Tenants to pay for all utilities, including water.

Lastly, the Landlord claims for a lease breaking fee of **\$500.00**. Clause 5 of the Tenancy Agreement sets out liquidated damages of \$500.00. An addendum to the

Agreement, which was initialled and signed by the Tenants, explains that if the Tenants move out prior to the end of the fixed term that they are responsible for paying the liquidated damages, cleaning charges and damages as set out in the condition inspection reports, and for rent for the months the rental unit is vacant.

In support of all the above claims the Landlord has provided copies of the relevant Tenancy Agreement and addendums, the condition inspection reports, the invoices for amounts claimed, various correspondence from the start of the tenancy, copies of advertising, and photographs of the rental unit and property.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants have breached the Tenancy Agreement and section 45 of the Act by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the Act, the Tenants were not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it. I find no evidence that the Tenants had authority under the Act to end the fixed term tenancy prior to it expiring.

I find the Tenants have breached section 26 of the Act by failing to pay rent when rent was due for January, February, March and April of 2013.

I find the Landlord has proven that the Tenants did not clean the unit before returning possession to the Landlord and this is a breach of section 37 of the Act and the Tenancy Agreement, as the Tenants failed to return the rental unit to the Landlord in a reasonably clean state.

I find the Tenants breached the Tenancy Agreement and addendums by failing to maintain the lawns and gardens, and by failing to pay the water bill. I also find the Tenants failed to re-fill the propane tank in breach of the Tenancy Agreement.

Section 7 of the Act states:

- (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I find the Agent for the Landlord acted quickly and consistently to mitigate the losses, as required under section 7 of the Act. I find the Agent advertised and marketed the property and made reasonable commercial efforts to re-rent the property.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$13,595.30** comprised of \$352.00 for cleaning, \$306.14 for propane, \$3,384.87 for gardening and repairs to the gardens and lawns, \$8,800.00 for rent for January to April of 2013, \$50.00 for two NSF charges, \$102.29 for the water bill, \$500.00 for liquidated damages, and \$100.00 for the fee paid for this application.

I order that the Landlord may retain the deposit of **\$1,100.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$12,495.30**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants breached the Act and the Tenancy Agreement as described above. The Landlord has established a monetary claim, may keep the deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due of **\$12,495.30**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2013

Residential Tenancy Branch

