



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 MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord's agent and the tenant participated in the conference call hearing.

At the outset of the hearing the tenant requested an adjournment, on the basis that the female tenant's mother had suffered a brain aneurism and both tenants were caring for her, so they have not had sufficient time to prepare for the hearing. The landlord objected to an adjournment, as the tenants had been served with notice of the hearing on September 20, 2013 and they should have been prepared for the hearing. I declined to grant an adjournment, as the tenants had three months to prepare for the hearing.

The tenant confirmed that they received the landlord's application and evidence. Both the landlord and the agent gave testimony in the hearing. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The latest tenancy agreement between the landlord and the tenants, CH and MS, was for a fixed term tenancy beginning June 1, 2013 and ending September 30, 2013, upon which date the tenants would be required to move out of the rental unit. The tenancy agreement included a liquidated damages clause which indicated that if the tenants breached the fixed term, they would be required to pay \$500 in liquidated damages. Rent in the amount of \$1037 was payable in advance on the first day of each month.

The tenancy agreement also indicates that a security deposit of \$497.50 was paid on April 6, 2010.

On July 29, 2013 the landlord sent the tenants a letter stating that the landlord would not be offering the tenants a new tenancy agreement, and the tenants would be required to vacate on September 30, 2013. Pursuant to an order of possession, the tenants vacated the rental unit on August 22, 2013.

Landlord's Evidence

The landlord claimed monetary compensation as follows:

- 1) \$2074 in outstanding rent for August and September 2013 – the tenants did not pay rent for August 2013. The landlord provided no evidence of attempts to mitigate their loss by attempting to re-rent the unit for September 2013.
- 2) \$100 for late fees and NSF fees – the tenant ledger shows three charges of \$25 for late payment of rent, for March 2013, July 2013 and August 2013. The ledger also shows “June rent/late fee” for June 2013, but it does not indicate a \$25 charge for this month;
- 3) \$1580.25 for repairs and cleaning – the landlord provided photographs and gave testimony regarding the condition of the rental unit when the tenants vacated;
- 4) \$500 for liquidated damages, as per the tenancy agreement – the tenants’ actions resulted in the landlord ending the tenancy before the end of the fixed term.

The landlord submitted a condition inspection report, dated May 1, 2010, which indicated an occupancy date with two different tenants, TM and BH, on May 1, 1990, and a vacating date of August 22, 2013. One of these tenants, BH, signed the report on move-in, and the other tenant, TM, signed on move-out. Neither of these signatures is dated. The landlord did not do a move-in inspection with the tenants named in this application (BH and MS).

The landlord submitted a tenant ledger identifying one of the tenants named in this application, MS. This ledger shows that MS paid a security deposit of \$497.50 on April 6, 2010; her move-in date was May 1, 2010, and her move-out date was September 30, 2013. The ledger does not identify the other tenant, BH.

Tenants' Response

The tenant acknowledged that they owe rent for August 2013, but denied owing for September 2013. The tenant stated that they spent about three days cleaning before vacating the rental unit, and several of the items left behind as well as damage to the unit was done by previous tenants.

Analysis

Upon consideration of the evidence, I find as follows.

The landlord is entitled to unpaid rent for August 2013, as acknowledged by the tenant. The landlord is not entitled to lost revenue for September 2013, as they failed to establish that they attempted to mitigate their loss by re-renting the unit as soon as possible.

The landlord is entitled to \$75 for three late fees as set out in the tenant ledger. The landlord did not provide sufficient evidence to establish that they charged the tenants for a fourth late fee.

The landlord is not entitled to any amount claimed for cleaning or repairs. The landlord did not do a move-in condition inspection report with the tenants, and therefore cannot establish the condition of the unit at the beginning of the tenancy. The landlord did not provide clear evidence of when the tenants named in this application began to occupy the unit; nor did the landlord establish the age of any of the items claimed for repair.

The landlord is not entitled to liquidated damages. The tenancy was for a fixed term of only three months, and the tenants were to move out at the end of the fixed term. Therefore, the landlord would have had to incur costs to re-rent the unit after the three months had passed in any case. Further, the landlord did not provide any evidence to establish how this amount was a genuine pre-estimate of the costs of re-renting.

As the landlord's claim was only partially successful, I find they are not entitled to recovery of their filing fee.

Conclusion

The landlord is entitled to \$1112. I order that the landlord retain the security deposit of \$497.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$614.50. This order may be filed in the Small Claims Court 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: January 8, 2014

Residential Tenancy Branch

