



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: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55 but this is no longer requested as the tenant vacated;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenants agreed they received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated August 2, 2013 for unpaid utilities and subsequently vacated the unit. Is the landlord now entitled to a Monetary Order for rent and utility arrears, other damages and the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises in February 2013 on a fixed term tenancy to February 28, 2014, a security deposit of \$400 and a pet damage deposit of \$400 were paid and rent was \$800 a month plus \$100 for hydro. A ten day Notice to End Tenancy for unpaid rent was served in August 2013 and the tenants said they vacated August 8, 2013 pursuant to the Notice, they stopped payment on their August cheque and their other postdated cheques were returned by the landlord. The landlord claims \$1600 rental arrears and loss for August and September, utility fees of \$200 and \$25 late fee and \$25 NSF fee

for each of August and September 2013 (\$100 total late and NSF fees). The landlord is treating the lease as at an end although they had not a tenant for September so is claiming liquidated damages of \$500 for administrative costs pursuant to clause 4 of the lease for advertising, showings, preparation and credit checks of new tenants. The tenant said the Notice to End Tenancy was served for utility arrears of \$100, they never received the warning letter from the landlord and when they telephoned management after receiving the Notice, they were told there was nothing they could do so they vacated.

The landlord also claims damages. \$2,184 was charged by a Professional Company for removing debris, replacing flooring and drywall repair. The landlord did not have a breakdown of the costs but listed several appliances, lumber, a smoker and debris that had to be removed from the back yard, transported to the front yard and loaded and dumped. He estimated \$100 in dumping fees plus 1.5 hours labour for this. The tenant said that the appliances and wood could all be delivered to nearby recycling depots who would accept them free and he thought it could be done in less time. The landlord said the home was built in the 1970s or 1980s and he was unsure of the age of the carpets as the purchaser had bought it three years ago, unsure of the age of the flooring and drywall but he thought the suite was newer, maybe 10 years old. The tenant said he was planning to replace the entry and bathroom floor because their dogs did damage those areas. He paid \$185 for the materials and a worker would also have charged for travel and installing. He did not have an opportunity to replace the floors.

The landlord also claims cleaning costs of \$126 and \$315. The first cleaner found it too extensive and they had to hire a professional to finish. The tenant said they left a key in a freezer outside the door and a friend was supposed to use it to enter, take any items they wanted and clean up but they found the door was barred from the inside on September 9th or 10th so were unable to enter. They said they told a property manager, an M.A., that they were leaving but did not give written notice of the date they were vacating. The landlord said that may have been a secretary at the company but they had not received word and had not had the key returned. The landlord said they had gained entry through the upstairs suite and had not found the downstairs door barred.

The tenants contended that they had no opportunity to do a final inspection although one was done at move-in. They said the landlord had their email address and telephone number but they got no calls. The landlord said they were given no forwarding address and they had no calls or response to email until they told the tenants that they needed their new address to deal with the security deposit. The landlord said they had posted a notice on the tenant's door for a move out inspection also; the tenants pointed out that the photo supplied as evidence by the landlord showed the

wrong house. The photo shows an Order of Possession in a different name and address. The tenant did not disagree that any of the other photographs of the damage did not belong to their property.

In evidence is a monetary worksheet, invoices to support the amounts claimed, a rental ledger, several photographs of the house and a condition inspection report signed by the tenant at move-in and only by the landlord at move-out.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession is no longer requested as the tenant vacated.

Monetary Order

The onus is on the landlord to prove the amount owed in outstanding rent. I find the landlord satisfied the onus. I find the weight of the evidence is that there are rental arrears and loss in the amount of \$1600 plus utility arrears of \$200 plus late and NSF fees of \$100. These charges are all for August and September when the tenant stopped payment on the cheques they supplied to the landlord. Although the tenants contended they should not be responsible for rent after they have been served a ten day Notice to End Tenancy for unpaid rent or utilities, I find they signed a fixed term lease expiring in February 2014 and legally they are responsible for rent until the end of the fixed term. I find they breached the lease by failing to pay rent and utilities when due. However, it is the landlord's duty to mitigate the damages and prepare and endeavour to re-rent as soon as possible after the breach. I find the landlord has chosen to treat the lease as ending on September 30, 2013 and charging the tenants \$500 to cover administrative costs as set out in clause 4 of the lease. In summary, I find the tenants responsible to pay the landlord \$2400 for rental arrears and loss and liquidated damages.

Respecting the landlord's claim for damages, the onus is on the landlord to prove on a balance of probabilities that the tenants caused the damages, that they were beyond reasonable wear and tear and the amount it costs to cure the damages. I find the landlord has satisfied the onus of proving that the unit needed extensive cleaning costing \$441 (126+315). Although the tenant contended that they had arranged for someone to get the key and do the cleaning, the fact is that no-one did. I find the condition inspection report on move-in did not show dirty conditions but the report on move out showed excessively dirty conditions. The move-out report is supported by

many photographs showing very dirty appliances, items left behind in the refrigerator, on cupboards and around the home.

I find further that the debris illustrated around the home is extensive. I find the landlord's estimate of 1.5 hours of labour (\$32 an hour) and \$100 dumping fees to be reasonable to remove this amount of debris. I find the landlord entitled to recover \$148 for dumping the debris. Although the tenant claimed there were free places to recycle in nearby areas and the work could have been less expensive, I find he had the option to do it himself, he chose not to and must bear the cost of others removing his debris.

I find the landlord was forthright in his testimony in trying to break down the cost of the various items included in the \$2184 invoice from the professional company. He was unable to comment on the age of the various items such as carpet, laminate flooring and drywall; he said the items including painting were over 3 years old (when the property was purchased) and the suite was maybe about 10 years old although he was not sure. The home dated from the 1980s. I find the *Residential Policy Guidelines* set out a useful life for items in rented premises which is designed to account for reasonable wear and tear. Flooring such as carpet and laminate is assigned a useful life of 10 years and paint, 4 years. Therefore, I find most of the claim relates to items that are beyond their useful life and therefore replacement of them is not compensated. However, I find the tenant honestly admitted that his dogs did extra damage to two floors; he said material could be bought for \$185 on special sale but the landlord said the matching of the material would be important. I find the weight of the evidence in respect to the floors is that the landlord is entitled to \$300 in compensation for the extra damage done by the pets. This reduced amount is to take into account the age of the existing flooring.

Although the tenants contended they did not get an opportunity to do a move-out inspection report, I find the landlord's evidence more credible and prefer it to the tenant's evidence that the landlord did make numerous efforts to contact them by email and telephone and they did not respond until asked about the return of their security deposit. I find the landlord's credibility supported by the fact that they left a big mess to clean up both inside and outside the home, they did not return the keys to the landlord and had arranged (they said) for someone else to come in and clean up. I find also it is questionable how the landlord could arrange a final inspection with them in those circumstances as it appeared the tenants had not vacated due to the quantity of belongings discarded in the home.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security and pet damage deposits to offset the amounts owing (some of the costs which were caused by the pets) and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears, loss, fees and liquidated damages	2400.00
Cleaning costs	441.00
Removing debris and dumping costs allowed	148.00
Allowance to replace two older floors	300.00
Filing fee	50.00
Less security and pet damage deposits	-800.00
Total Monetary Order to Landlord	2539.00

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: December 19, 2013

Residential Tenancy Branch

