



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, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her assistant, and her witness and the landlord's agent.

During the hearing the landlord indicated and the tenant and her witness confirmed that the tenant had not served the landlord with any evidence that they had provided to the Residential Tenancy Branch. The tenant submits that their evidence consisted of correspondence between the two parties and as such she didn't think she needed to provide it to the landlord.

I referred the tenant to the instructions provided on the Notice of Hearing document that stipulates evidence to support the tenant's position must be given to the other party and the Residential Tenancy Branch before the hearing.

As a result, I advised both parties I am unable to consider the tenant's documentary evidence and will rely solely on verbal testimony provided by the tenant and her witness for this decision.

Also during the hearing and at the end of the tenant's witness's testimony the witness indicated that he had approached a local media agent about this case and depending on the outcome of the decision he will make this a big news story. It is unclear as to the witness's intent behind advising me of this other than to attempt to influence my decision.

This decision is based on the relevant documentary evidence and testimony provided by the landlord's agent; the relevant testimony of the tenant and her witness; and the applicable legislation, regulation and Residential Tenancy Branch Policy Guidelines.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage to and/or cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on February 6, 2013 for a 1 year fixed term tenancy beginning on March 1, 2013 for a monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The tenancy agreement also included a liquidated damages clause (Clause 5) stating that if the tenant ends the tenant fixed term tenancy, or is in breach of the Act or a material term of the tenancy agreement that causes the landlord to end the tenancy before the end of the fixed term the tenant will pay the landlord \$500.00 as liquidated damages. The clause goes on to explain that the liquidated damages are an agreed upon pre-estimate of the landlord's costs of re-renting the rental unit.

The agreement includes Clause 10 that stipulates that late payment of rent is subject to an administrative fee of \$25.00. Clause 14 states, in part, that Hooks, nails, tapes, or other devices for hanging pictures or plants or for affixing anything to the rental unit will be of a type approved by the landlord and used only with the landlord's prior written consent. Clause 23 states that if the carpets were new or professionally cleaned at the start of the tenancy the tenant will pay for professional cleaning at the end of the tenancy.

The tenant submits that she had moved into the rental unit with a new bed and a new couch and that by April 2013 she had contacted the landlord complaining that there were bedbugs in the rental unit. The landlord confirms the tenant reported the presence of bedbugs on April 7, 2013.

The landlord submits the following timetable that is not disputed by the tenant:

- Pest control service provider attended the unit after the complaint and found one bug. Service provider treated rental unit;
- April 24, 2013 – pest control service provider found 1 dead bedbug on follow up inspection;
- May 21, 2013 – tenant reported additional concerns;
- Pest control service provider attended the unit and found no bugs;

- June 2, 2013 – tenant reported additional concerns about bedbugs;
- The landlord submits he offered to bring in the pest control service providers again but it would be at the tenant's cost – this offer was declined by the tenant;
- After the tenant vacated the unit the landlord submits he had the pest control service provider complete another inspection and found no activity in the unit.

The landlord has submitted a written report from the pest control service provider confirming that no activity was found in the rental unit in June 12, 2013 and that only a single dead bug was found behind the toilet.

The tenant submits that despite this report she had been severally bitten by the bedbugs and could no longer stay in the unit. She states that because of the bites she lost her employment and moved back to her grandparent's home in another community and had to have her belongings heat treated in another community at great expense. The tenant's witness testified that because of the bites he assisted her in moving out her belongings on an emergency basis.

The landlord submits that they began advertising the rental unit immediately on their corporate website as well as on Craigslist and Kijiji and in the local newspaper. The landlord submits the rental unit was re-rented effective September 6, 2013. The landlord seeks rent for the months of June, July and August 2013. The landlord also seeks late payment charges for each of these three months in the amount of \$75.00 and liquidated damages in the amount of \$500.00.

The landlord submits that when the tenant moved out she did not provide a forwarding address to the landlord and so he text messaged her regarding a move out inspection and she never responded. He states that he also posted a notice of the inspection on the rental unit door in case she returned to the unit. The tenant did not attend the moved out condition inspection.

The tenant and her witness confirm that cleaning and carpet cleaning was not completed. The landlord submits that rental unit was renovated prior to the start of the hearing including floor coverings.

They submit that they do not, however, believe the tenant should be responsible for painting in the bathroom because the unit was not ventilated properly to remove humid air. I note that the landlord's claim does not include any painting in the bathroom just scrubbing the bathroom; unplugging the sink and cleaning the mirror, cabinet, and floor.

The landlord has provided a Condition Inspection Report that records the condition of the rental unit at both move in and move out. The landlord has also provided photographs of the condition of the rental unit at the end of the tenancy and receipts for the work completed. The landlord seeks \$99.75 for carpet cleaning and \$212.64 for cleaning and repairs.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

“A Guide for Landlords & Tenants in British Columbia” page 31 states under section 14.2 that if a landlord has breached a material term of the tenancy the tenant could decide to end the tenancy without giving full notice. The procedure for this is outlined as follows:

Before the end of the tenancy, the tenant must:

1. Provide the landlord written notice of the decision to end the tenancy indicating the breach;
2. Give a reasonable time for the landlord to correct the problems;
3. If need be, submit an Application for Dispute Resolution. The landlord may also submit an Application for Dispute Resolution seeking to set aside the tenant's notice. An arbitrator may decide in the landlord's favour if the term was not material; the breach was not serious enough to end the tenancy; or the tenant did not exercise all available options beforehand.

As there is no evidence before me that the tenant provided the landlord with a written notice of her intention to end the tenancy if the landlord failed to correct a breach of a material term of the tenancy agreement, I find the tenant did not attempt to end the tenancy in accordance with Section 45(3).

As such, I find the earliest the tenant could have ended the tenancy in accordance with Section 45(2) was February 28, 2014. Further, I find the tenant has provided no evidence at all that there was a bedbug infestation; that she suffered from bites that resulted from bedbugs in this rental unit; or that her belongings required any treatment to rid them of bedbugs.

For these reasons, I find the tenant is responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate their losses. I find the landlord took reasonable steps to attempt to re-rent the unit and satisfy their obligations to mitigate.

As a result, I find the landlord is entitled to \$700.00 for lost rent for the month of June 2013 because the tenant was still in possession of the unit at the start of June; for

\$1,400.00 for lost revenue for the months of July and August 2013; \$25.00 for the late payment fee for the month of June 2013; and \$500.00 for mitigated damages.

As to the late payment fees requested by the landlord for July and August 2013, I find the tenant had returned possession of the rental unit to the landlord in June 2013 and as such the landlord was no longer entitled to rent for the months of July and August but rather to compensation for lost revenue. As such, I find that Clause 10 is not applicable to the landlord's losses suffered for lost revenue. I dismiss this portion of the landlord's Application.

Based on the testimony of both parties I find the tenant failed to have the carpets professionally cleaned at the end of the tenancy and as such, I find the tenant responsible for the charges identified by the landlord. I am satisfied the landlord has established the cost carpet cleaning through his receipt in the amount of \$99.75.

As to the remaining cleaning and repairs, I find the tenant failed to clean the rental unit and failed to obtain prior written approval for the methods of hanging items on the rental unit walls. As a result I find the tenant is responsible for the costs of cleaning and repairs as supported by the landlord's receipt for these items in the amount of \$212.64.

Conclusion

Based on the above I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,987.39** comprised of \$700.00 rent owed; \$1,400.00 lost revenue; \$25.00 late rent payment fee; \$500.00 liquidated damages; \$212.64 cleaning and repairs; \$99.75 carpet cleaning; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$350.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,637.39**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 24, 2014

Residential Tenancy Branch

