



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 FF, MNDC, MNSD

Introduction

This is an application for a Monetary Order for \$1121.20, a request for recovery of the \$50.00 filing fee, and request to retain the full security deposit of \$897.50 towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the landlord establish a monetary claim against the tenant and if so for what amount?

Background and Evidence

The applicant testified that:

- The tenant was given the cleaning list at the end of the tenancy so the rental unit would be left in the same condition as when it was received, however the tenant failed to properly clean the rental unit.
- The tenant did hire cleaners to come and do work in the rental unit, however they failed to complete the job and as a result they, the landlord's, also had to hire professional cleaners at a cost of \$378.00 for a total of 12 hours of cleaning.

- The tenant also failed to change the refrigerator filter, even though the indicator in the refrigerator showed that the filter required changing. Therefore they had to purchase a filter and send someone to install it.
- The tenant also breached the tenancy agreement, requesting to vacate the rental unit well before the end of the tenancy agreement.
- The fixed term tenancy agreement did not expire until February 20, 2014, and the tenant requested to move in the summer of 2013, stating that he had to move for work purposes.
- Since the tenant requested to move early they advertised the unit for rent and re-rent the unit for mid-September 2013.
- They are therefore requesting that the tenant pays the liquidated damages fee that is in the tenancy agreement that is required if the tenant vacates prior to the end of the lease.

They are therefore requesting a Monetary Order as follows:

12 hours of cleaning	\$378.00
Replace refrigerator filter	\$117.20
Liquidated damages	\$500.00
Filing fee	\$50.00
Total	\$1045.20

They also request an order allowing them to keep the full security deposit towards the claim and requested a Monetary Order be issued for the difference.

The respondent testified that:

- He hired professional cleaners to come in and clean the rental unit; however they were unable to finish the job as they ran out of time.
- He does not dispute that some further cleaning was required, however he believes the amount claimed by the landlord is excessive.
- There is nothing in his tenancy agreement that states that he is responsible for changing the filter in the refrigerator, nor was he ever shown where or how to change the refrigerator filter. He was never aware that the landlord's expected him to change this filter.
- He did not breach the tenancy agreement, and in fact had told the landlords he was willing to stay to the end of his fixed term agreement however he stated he would be willing to move earlier if the landlords wanted to re-rent the unit earlier.
- They never told the landlords he had to move for work purposes, in fact he still living just a few blocks away from this previous rental unit.

- You can see from the letter I sent on July 8, 2013 that I was fully willing to stay to the end of my lease and was only going to move if the landlords wanted to re-rent the unit.

Analysis

Cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have shown that the tenants failed to meet the "reasonable" standard of cleanliness required; however since the landlords must expect to have to do some cleaning themselves I will not allow the full amount claimed.

I'm willing to allow one half of the amount claimed by the landlords for cleaning, therefore the amount allowed is \$378.00 divided by two equals \$189.00.

Refrigerator filter

I deny the landlords claim for replacing the refrigerator filter, because there is nothing in the tenancy agreement requiring the tenant to change the filter, nor is there any evidence to show that the tenant was even shown where or how to change the filter in the refrigerator.

The landlord has argued that changing a refrigerator filter is similar to having to change light bulbs, which tenants are always responsible to do, however it's my finding that it is not the same. It's very obvious when the light bulb burns out, however unless the tenant has been shown where and how to change the filter in a refrigerator, this is not something that would be obvious.

Liquidated damages

I will allow the landlords claim for liquidated damages as I find it most likely that it was the tenant that requested that the tenancy be ended early.

I find it very unlikely that the landlords would've listed the rental unit for rent in the middle of the tenants fixed term, had the tenant not requested that the landlord do so.

The tenant claims that he agreed to move early for the landlord's benefit; however I fail to see how leaving the tenancy well before the end of the lease benefits the landlord. The benefit here seems to be to the tenant, giving him the benefit of not having to move in the middle of winter.

The tenant signed an agreement with a liquidated damages clause stating that he would be required to pay \$500.00 if he ended the tenancy prior to the end of his lease, and it's my finding that he's bound by that clause.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Cleaning	\$189.00
Liquidated damages	\$500.00
Filing fee	\$50.00
Total	\$739.00

Conclusion

I have allowed \$739.00 of the applicant's claim, and I therefore order that the applicants may retain \$739.00 of the tenant security deposit, and I have issued an Order that the \$158.50 remainder of the deposit be returned to the tenant.

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 20, 2014

Residential Tenancy Branch

