



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 OPR MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. At the outset of the hearing the landlord stated that the tenant vacated the rental unit on March 7, 2014, and I therefore dismissed the portion of the application regarding an order of possession.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord submitted evidence that they served the tenant with the application for dispute resolution and notice of hearing by registered mail sent on February 24, 2014. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on March 1, 2014, and I proceeded with the hearing in the absence of the tenant.

The landlord amended their application on March 26, 2014, and the landlord stated that they personally served the tenant with their evidence and the amended application in person at the tenant's place of work on March 27, 2014. I accepted the landlord's evidence regarding service of the evidence and amended application, and allowed the amendment.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenant first began occupying the unit on August 15, 2012, in a fixed-term agreement that ended on August 31, 2013. At the outset of the first tenancy, the landlord collected a security deposit of \$387.50 and a pet deposit of \$387.50. On August 15, 2012 the landlord and the tenant carried out a joint move-in inspection and signed a condition inspection report.

On September 1, 2013 the landlord and the tenant then entered into a second fixed term set to end on August 31, 2014. The second tenancy agreement indicates monthly rent of \$775 and also contains a clause indicating that if the tenant vacates the rental unit before the end of the fixed term, he must pay a liquidated damages amount of \$500. The security and pet deposits were carried over from the first tenancy agreement.

On July 24, 2013 the landlord served the tenant with a notice of rent increase, which indicated that the tenant's rent would increase from \$775 to \$804 beginning November 1, 2013.

The tenant did not pay full rent for January 2014, and did not pay rent for February 2014. On February 7, 2014 the landlord served the tenant with a notice to end tenancy for unpaid rent of \$1128.50. The tenant further failed to pay rent for March 2014, and he vacated the unit on March 7, 2014. The landlord returned the tenant's pet deposit.

The landlord stated that the rental unit was damaged and required cleaning after the tenant vacated. The landlord submitted photographs and receipts to support this portion of their claim.

The landlord has claimed the following:

- 1) \$1932.50 in unpaid rent and lost revenue;
- 2) \$500 in liquidated damages;
- 3) \$199.32 to repair a door; and
- 4) \$136.50 for cleaning.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

The notice of rent increase that the landlord served on the tenant is not valid. A rent increase may only take effect after at least one year of the tenancy has passed. The landlord and the tenant entered into a new tenancy beginning September 1, 2013, and

therefore the landlord could not increase the rent before September 1, 2014. The landlord has not claimed a valid amount for unpaid rent and lost revenue, and I therefore find that this portion of the landlord's claim for must fail.

A liquidated damages amount must be a genuine pre-estimate of the cost of re-renting. The landlord did not provide any evidence that the liquidated damages amount was a genuine estimate of the cost of re-renting, and therefore this portion of the landlord's claim also fails.

I accept the landlord's evidence regarding the damage to the door and the cleaning required. The condition inspection report shows that the door in question was not damaged at the beginning of the tenant's occupation of the unit, and the photographs clearly show damage to the door. I accept the landlord's evidence that the rental unit also required cleaning after the tenant vacated. The landlord is entitled to \$199.32 for the damaged door and \$136.50 for cleaning.

As the landlord's application was partly successful, they are also entitled to recovery of the \$50 filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$385.82. I order that the landlord retain the security deposit of \$387.50 in full compensation of their claim. I decline to grant a monetary order for the minimal balance of \$1.68.

The remainder of the landlord's application is dismissed.

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: May 8, 2014

Residential Tenancy Branch

