



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemperton Holmes Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the balance of the security and pet deposit and to recover the filing fee from the landlord for the cost of this application.

The hearing went ahead as scheduled the landlord dialed into the conference call. The line remained open for the duration of the hearing until 09.22 a.m.; however, no one for the tenant dialed into the hearing. Based on the above I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 17, 2014. Canada Post tracking numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the landlord's testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the security and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on July 01, 2012 and a new tenancy agreement was made between the parties on July 01, 2013 for a fixed term tenancy ending on June 30, 2014. Rent for this unit is \$600.00 per month plus \$50.00 for utilities which was due on the 1st of each month. The tenant paid a security deposit of \$300.00 on June 19, 2013 and a pet deposit of \$300.00 on June 26, 2013.

The landlord testified that the tenant failed to leave the rental unit in a clean condition despite being given extra time to do this cleaning. Extra cleaning had to be performed in the unit by the landlord's cleaner. This work took three hours at \$30.00 per hour. The areas which had to be cleaned were the fridge, stove, cupboards, the floors, behind the appliances and the walls in the kitchen; the bathroom; the closet in the bedroom; and the blinds in the unit. The landlord testified that there was also some tape left on the interior and exterior of a window and a door to the laundry room. The tape had to be removed and when this was removed from the door it took off some of the door paint; consequently, the landlord's handyman had to repaint the door.

The landlord testified that the tenant failed to remove all her garbage and recycling from the unit and this had to be removed by the landlord's handyman. The landlord testified that when she first filed the application she had not included the tax charged on the cleaning or repair invoice. The landlord therefore sent in a revised Monetary Order Worksheet showing the amounts claimed which included tax as shown on the invoices.

The landlord testified that the tenant had verbally taken responsibility for the three hours of cleaning and the tape on the windows but neglected to sign the move out inspection form giving permission for the landlord to make deductions from the tenant's security deposit. The tenant then later retracted her verbal agreement.

The landlord testified that an amount of \$267.40 was deducted from the tenant's security and pet deposit and the balance of \$332.60 was returned to the tenant by cheque on February 14, 2014.

The landlord refers to their documentary evidence in the form of the move in and move out condition inspection reports which details the condition of the unit at the start and end of the tenancy. The landlord has also provided photographic evidence showing areas of the unit which required cleaning, showing tape on the window and door and the items which were left in the unit. The landlord has provided two

invoices in documentary evidence. The cleaning invoice is for \$94.50 which includes tax. The invoice for the tape removal, painting the door and the disposal of garbage and recycling is for \$186.90 including tax.

The landlord seeks an Order to keep the security deposit of \$267.40 and a Monetary Order for the balance of their claim of \$14.00. The landlord also seeks to recover the filing fee of \$50.00.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied with the evidence before me that the tenant failed to leave the rental unit in a reasonable clean condition as required under s. 32 of the *Act*. I therefore uphold the landlord's revised claim to recover the cost to clean the unit of \$94.50 pursuant to s. 67 of the *Act*.

Furthermore, I am satisfied that the landlord has sufficient evidence to show that tape was removed from a window and door and that the removal of the tape from the door resulted in the door requiring repainting. I am also satisfied that the tenant did not remove her garbage or recycling. Consequently, I uphold the landlord's claim for \$186.90 pursuant to s. 67 of the *Act*.

As the landlord has returned part of the security deposit to the tenant within 15 days of the end of the tenancy; I Order the landlord to retain the balance of the security deposit of \$267.40 pursuant to s. 38(4)(b) of the *Act*. The landlord made an error in not calculating the tax due on the invoices when part of the security deposit was returned; therefore, the landlord is entitled to recover the remainder of their claim of \$14.00 from the tenant.

As the landlord has been successful with their revised claim I find the landlord is also entitled to recover the filing fee from the tenant of \$50.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Cleaning costs	\$94.50
Handyman's work	\$186.90
Filing fee	\$50.00
Amount awarded to the landlord	\$331.40
Security and pet deposit retained by the landlord	\$267.40
Security deposit returned to the tenant	\$332.60
Total amount due to the landlord	\$64.00

Conclusion

A Monetary Order in the amount of **\$64.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

The tenant's application is dismissed without leave to reapply

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: June 02, 2014

Residential Tenancy Branch

