



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

For the tenant: MNDC MNSD
For the landlord: MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for the return of double her security deposit and pet damage deposit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically, the cost of “crawling insect powder”, “cleaning apartment”, and for “movers”.

The landlord applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the security deposit and pet damage deposit, and to recover the filing fee.

An agent for the landlord (the “agent”), a witness for the landlord “DO”, and the tenant attended the hearing, which began on April 14, 2014. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing on April 14, 2014, the hearing was adjourned based on the request of the tenant, as the tenant indicated that she suffered from “shingles”. In the interests of procedural fairness, the hearing was adjourned as the cross-applications were related to monetary claims only, and not an order of possession. On April 14, 2014, the tenant was also ordered to pick up the documentary evidence from the post

office as she failed to pick up the landlord's evidence due to "shingles". The agent confirmed that she received the tenant's documentary evidence and had the opportunity to review the tenant's evidence.

On June 12, 2014, both parties attended the reconvened hearing, as did landlord witness "DO", and landlord witness "TV". The parties were affirmed and the hearing continued once the tenant confirmed that she received the landlord's evidence and had the opportunity to review the landlord's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

During the hearing, the tenant requested to reduce her monetary claim from the original amount being claimed, \$3,209.05, to \$1,259.05, comprised of \$36.55 for crawling insect powder, \$100.00 for cleaning apartment, and \$1,122.50 for the cost of movers. The tenant was permitted to reduce her monetary claim during the hearing, as I find that a reduction of the tenant's monetary claim does not prejudice the landlord.

Settlement Agreement

During the hearing, the parties agreed to settle on the following during the hearing:

1. The tenant agrees to surrender her full security deposit of \$487.50 and pet damage deposit of \$487.50, for a total in combined deposits of \$975.00 to the landlord as compensation for unpaid rent for the month of December 2013. As a result, the tenant withdraws her request for double the return of the security deposit and pet damage deposit, as she has surrendered both deposits to the landlord.
2. The landlord agrees to compensate the tenant \$36.55 for "crawling insect powder" as claimed by the tenant.

3. Regarding the tenant's claim for \$100.00 in cleaning costs, the parties agree that the tenant will provide a receipt in writing to the landlord **by June 27, 2014**, indicating 5 hours of cleaning at \$20.00 per hour dated October 21, 2013. The landlord agrees that once the receipt described above has been received by the landlord, the landlord will pay the tenant \$100.00 within 15 days of the date the receipt is received.

This settlement agreement was made in accordance with section 63 of the *Act*. The remainder of this decision will address the remaining matters that were not agreed upon by the parties during the hearing.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 15, 2013, and was scheduled to revert to a periodic, month to month tenancy after September 30, 2014. Monthly rent in the amount of \$975.00 was due on the first day of each month. The tenant paid a security deposit of \$487.50 and a pet damage deposit of \$487.50 at the start of the tenancy, both of which as described above, have been surrendered in full to the landlord as compensation for unpaid December 2013 rent.

The tenancy ended on December 31, 2013 based on a mutual agreement to end the tenancy, which was submitted in evidence. The parties signed the mutual agreement to end the tenancy on November 26, 2013.

Landlord's claim

Further to the settlement agreement described above, the only portion of the landlord's claim that was not resolved by way of a mutually settled agreement was the landlord's \$115.00 claim for carpet cleaning.

The agent referred to the outgoing condition inspection report dated December 23, 2013. Section 23 of the tenancy agreement and the addendum to the tenancy agreement, both of which were signed by the tenant, indicate that carpets are to be professionally cleaned at the end of the tenancy. The tenant confirmed during the

hearing that she did not have the carpets professionally cleaned. The landlord submitted a receipt for carpet cleaning in the amount of \$115.50 dated December 27, 2013. The agent stated that the carpets were professionally cleaned on October 14, 2013, prior to the tenant moving into the rental unit. The agent referred to a carpet cleaning receipt submitted dated October 14, 2013, in support of her testimony.

Tenant's claim

Further to the settlement agreement described above, the only portion of the tenant's claim that was not resolved by way of a mutually settled agreement was the tenant's \$1,122.50 claim for movers.

The tenant stated that she had to move due to insects and is seeking full compensation for her moving costs as a result. The tenant confirmed that she did not indicate that there were any insects on the incoming or outgoing condition inspection reports. The tenant submitted two receipts with a total of \$1,222.50, but clarified that the moving company did not charge her \$100.00 of the total bill, which is why she was claiming \$1,122.50. The tenant confirmed that she did not write to the landlord regarding insects in her rental unit during the tenancy.

Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for carpet cleaning - The tenant confirmed she did not have the carpets professionally cleaned at the end of the tenancy. As both parties signed the tenancy agreement and the addendum to the tenancy agreement, which required the carpets to be professionally cleaned at the end of the tenancy, I find the landlord has met the burden of proof to support this portion of the landlord's claim.

The landlord submitted a receipt for professional carpet cleaning prior to the tenant moving into the rental unit and a receipt for professional carpet cleaning after the tenant vacated without cleaning the carpets professionally. As the amount of the receipt being claimed is only fifty cents more than the claim listed on the landlord's application, I find the landlord is entitled to the full amount of **\$115.50** for carpet cleaning.

Tenant's claim for moving costs – The tenant confirmed that she did not indicate in the incoming or outgoing condition inspection reports that there were insects in the rental unit, and did not write to the landlord regarding insects during the tenancy. I find the tenant has failed to meet part one of the four-part test for damages or loss described above. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**. The tenant's filing was waived and as a result, will not be considered further.

I find the parties monetary claims are offset as follows:

1. Mutual agreement for landlord to pay tenant for crawling insect powder	\$36.55
2. Mutual agreement for landlord to pay tenant for cleaning costs.	\$100.00
Subtotal of amount owing by landlord to tenant	\$136.55
<i>Less \$115.50 owing by tenant to landlord for carpet cleaning</i>	<i>-(\$115.50)</i>
<i>Less \$50.00 owing by tenant to landlord for recovery of the landlord's filing fee</i>	<i>-(\$50.00)</i>
Subtotal of amount owing by tenant to landlord	\$165.50
Net amount owing by tenant to the landlord, comprised of	\$28.95 owing by

\$165.50 owing by tenant, less \$136.55 owing by landlord	tenant to the landlord
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As noted above, the tenant has surrendered her full security deposit and pet damage deposit to compensate the landlord a total of \$975.00 for unpaid for December 2013. I authorize the landlord to retain the tenant's security deposit and pet damage deposit pursuant to their mutual agreement reached during the hearing.

As this decision has been written after the June 27, 2014 deadline date agreed to by the parties in reference to condition #3 of the settlement agreement of the parties described above, I have presumed the tenant will comply with condition #3 of the settlement agreement in the amounts I have offset above. However, should the tenant fail to provide the cleaning receipt to the landlord by June 27, 2014, I provide leave for the landlord to apply for dispute resolution citing breach of a material term of the mutually settled agreement of the parties described above.

Given the above, and after offsetting the amounts owing by the parties, **I find** the tenant owes the landlord a total balance of **\$28.95**. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$28.95**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I order the parties to comply with the terms of their settlement agreement described above.

After offsetting the amounts owing by the parties, the tenant owes the landlord a total balance of \$28.95. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$28.95. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As this decision has been written after the June 27, 2014 deadline date agreed to by the parties in reference to condition #3 of the settlement agreement of the parties described above, I have presumed the tenant will comply with condition #3 of the settlement agreement in the amounts I have offset above. However, should the tenant fail to provide the cleaning receipt to the landlord by June 27, 2014, I provide leave for the landlord to apply for dispute resolution citing breach of a material term of the mutually settled agreement of the parties described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 4, 2014

Residential Tenancy Branch

