



Dispute Resolution Services

Page: 1

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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; a monetary Order for damage to the rental unit; a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 26, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted two Canada Post receipts that corroborate this statement. The Agent for the Landlord stated that the forwarding address was received by text message. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and utilities, a late fee, liquidated damages, and cleaning costs; and is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that the Tenant moved into the rental unit on November 29, 2013. She stated that the parties entered into a fixed term tenancy agreement, the fixed term of which began on December 01, 2013 and ended on November 30, 2014. The agreement requires the Tenant to pay monthly rent of

\$750.00 and hydro of \$75.00 by the first day of each month. The Landlord submitted a copy of the tenancy agreement, which appears to be signed by both Tenants.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$375.00 and that the Tenant provided a forwarding address, via text message, on January 03, 2014.

The Agent for the Landlord stated that on December 18, 2013 the Tenant provided written notice of their intent to vacate the rental unit at the end of January of 2014. She stated that on January 03, 2014 the Tenant advised the Landlord the rental unit had been vacated. The Landlord is seeking \$825.00 in rent/utilities for January of 2014, as none has been paid.

The Landlord is seeking compensation, in the amount of \$25.00, as the Tenant did not pay rent when it was due on January 01, 2014. There is a term in the tenancy agreement which requires the Tenant to pay a fee of \$25.00 whenever the rent is not paid on time.

The Landlord is seeking compensation, in the amount of \$250.00, for liquidated damages. There is a term in the tenancy agreement which requires the Tenant to pay this amount if the Tenant prematurely ended the fixed term tenancy.

The Landlord is seeking compensation, in the amount of \$308.54 for cleaning the rental unit. The Landlord submitted receipts for cleaning the unit, cleaning the carpet, and disposing of garbage. The Agent for the Landlord stated that the rental unit required cleaning at the end of the tenancy.

The Landlord submitted a copy of the Condition Inspection Report that was completed at the start and the end of the tenancy. The Agent for the Landlord stated that the Tenant agreed to participate in the final inspection, which was scheduled for 10:00 a.m. on January 06, 2014. The Agent for the Landlord stated that shortly before the scheduled inspection the Tenant contacted the Landlord and informed the Landlord to proceed in the absence of the Tenant. The Condition Inspection Report indicates the rental unit required cleaning.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent/utilities of \$825.00 by the first day of each month.

On the basis of the undisputed evidence, I find that this tenancy ended when the Tenant abandoned the rental unit on January 03, 2014, pursuant to section 44(1)(d) of the *Act*. As the tenancy had not ended by January 01, 2014, I find that the Tenant was obligated to pay the \$825.00 in rent/utilities that was due on January 01, 2014. As this money has not yet been paid, I find that the Tenant owes this amount to the Landlord.

As the Tenant did not pay rent when it was due on January 01, 2014 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of January.

I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenants, that requires the Tenants to pay \$250.00 to the Landlord if they prematurely end this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$250.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. As the Tenant ended this tenancy before the end of the fixed term of the tenancy, I find that the Tenant must pay the liquidated damages of \$250.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$308.54.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,408.54, which is comprised on \$825.00 in unpaid rent/utilities, a late fee of \$25.00, \$250.00 in liquidated damages, \$308.54 for cleaning, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the \$375.00 security deposit in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,033.54. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: June 17, 2014

Residential Tenancy Branch

