



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 landlord – MNSD, 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 an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

One of the tenants (SR) and the landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord permitted to keep all or part of the security deposit?

Is the tenant entitled to recover the security deposit?

Background and Evidence

The parties agreed that this tenancy was due to start on June 01, 2014 for a fixed term tenancy of a year. Rent was agreed at \$840.00 plus \$25.00 for parking per month and these amounts

were due on the 1st of each month. The tenants paid a security deposit of \$420.00 on April 29, 2014.

The landlord's testimony

The tenants had viewed the unit and were unsure about renting it so had a second viewing and agreed to rent the unit. The landlord scanned and emailed the documents to the tenants on April 25, 2014 and advised the tenants to sign and return the documents and include a security deposit by April 29, 2014 if they wanted to go ahead with this agreement. This gave the tenants four days to make a final decision about renting the unit. The tenant SR asked for an extension on the time limit to return the signed documents; however, as the landlord had another potential tenant who wanted the unit, an extension could not be granted as if these tenants did not want to rent the unit the other prospective tenant had to give written notice on their current unit before the end of the month.

SR did sign and return the documents on April 28 and paid a security deposit of \$420.00. On April 30, 2014 the other tenant KR sent the landlord written notice stating that she did not want to move into the rental unit. On May 01, 2014 the tenants were sent a letter concerning the lease break fee as indicated in the tenancy agreement. The tenants were informed that they were responsible for the rent and the lease break fee as liquidated damages of \$500.00. On May 12, 2014 the landlord managed to re-rent the unit for June 01, 2014 and informed the tenants that they would no longer be responsible for the rent but were still required to pay the liquidated damages for the costs of re-renting the unit. The landlord also agreed to reduce the liquidated damages to \$420.00 and asked the tenants to agree in writing that the landlord could keep the security deposit paid to cover this cost.

The other prospective tenant interested in the unit had rented somewhere else so the landlord advertised the unit on four internet sites one of which required payment, the resident caretaker had to take time arranging viewings and showing the unit to prospective tenants and the office had to process new applications and run credit checks for prospective tenants. Due to this the landlord feels the liquidated damages of \$500.00 indicated on the tenancy agreement was a genuine pre-estimate of costs incurred to re-rent the unit.

The tenant's testimony

The tenant disputed the landlord's claims. The tenant does not believe the lease agreement is legally enforceable. The other tenant was away on a remote camping trip and could not be contacted. Therefore, the lease has only been signed by SR. SR had called and asked the landlord for an extension of time to sign the lease until KR returned home but was denied the extension needed. SR felt under pressure from the landlord to sign the lease agreement. When KR returned home she decided that she did not want to rent a ground floor unit. SR seeks to recover the security deposit of \$420.00.

The landlord testified that the tenant sent the landlord an email, a copy of which has been provided in evidence, in that email the tenant thanked the landlord for her assistance and stated they were looking forward to moving to Victoria. The landlord testified that the tone of this email does not indicate that the tenant SR felt pressurised to sign the lease agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenancy agreement is entered into and both parties have signed that agreement the agreement becomes legally binding whether or not both tenants have signed the agreement. As this was a fixed term tenancy the tenants could not legally end the tenancy until the end of the fixed term. If the tenants did elect to end the tenancy then the tenants are responsible for meeting the terms of the tenancy agreement.

The landlord did manage to re-rent the unit again for the same day the tenancy was due to start; however, in the tenancy agreement there is a clause for liquidated damages of \$500.00 if the tenants break the terms of the tenancy. One of the tenants changed her mind about living in the unit after the other tenant had signed the tenancy agreement and therefore broke the terms of the agreement. As such the landlord is entitled to enforce the liquidated damages clause.

The landlord has testified that the charges indicated under the liquidated damages clause is a genuine pre-estimate of costs incurred to re-rent the unit. I have considered what is involved in re-renting a unit and find the charges of \$500.00 to be reasonable and a fair estimate of what it costs to re-rent a unit. The landlord agreed to reduce this cost to \$420.00. It is my decision that

the landlord is entitled to recover this amount by permitting the landlord to keep the security deposit of \$420.00 pursuant to s. 38(4)(b) of the *Residential Tenancy Act*.

The tenant's application to recover the security deposit is therefore dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. The landlord may retain the security deposit of \$420.00. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00 for reimbursement of the filing fee. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenant's application is dismissed in its entirety 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: September 17, 2014

Residential Tenancy Branch

