



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 45, 46 and 67;
- c) An Order to retain the security and pet damage deposits pursuant to Section 38;
and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord provided evidence of service of the Application for Dispute Resolution by a process server who filed an Affidavit. Although the landlord had requested an Order of Substituted Service, I find the evidence is that the process server telephoned the male tenant and arranged to meet him at a local coffee shop where they served him in person; I find an order for substituted service is not necessary. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced with a fixed term lease on February 1, 2014 with expiry of January 31, 2015. Rent was \$1350 a month and a security deposit of \$675 and a pet damage deposit of \$675 were paid in January 2014. The tenant vacated on November 21, 2014 and the landlord was able to re-rent for January 1, 2015.

The landlord claims as follows:

\$1350 November rent plus \$25 late fee and \$25 NSF fee; rent ledger in evidence.

\$1350 December 2014 rent plus \$25 late and \$25 NSF fee

\$89.25 carpet cleaning; invoice on file and supported by the move-out inspection.

\$6.70 for keys; invoice provided.

\$500 liquidated damages for breaching the lease as a genuine pre-estimated cost of re-renting the unit.

Less: \$2.50 credit on the tenant account.

The tenant did not attend the move out inspection although the landlord attempted and documented several times to arrange a time. Some keys were returned but some not. The tenant did not dispute the amount owing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus of proof is on the landlord to prove that the tenant owes rent and did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage.

I find there was a fixed term lease expiring on January 31, 2015 and the tenant vacated and ceased paying rent in November 2014. Section 45 of the Act states that a fixed term tenancy may not be ended before the end of the term; I find the landlord in letters to the tenant pointed out their obligations and tried to mitigate their damages as required by suggesting the tenants remain in residence until a new tenant was found. I find the landlord mitigated their damages by re-renting for January 1, 2015 after vigorous advertising.

I find the landlord entitled to recover \$1350 rental loss for both November and December 2014 and \$50 for each month for late fee and NSF cheques; this claim is founded on their lease terms and also in Regulation 7 of the Residential Tenancy Regulations. I find them also entitled to recover \$500 in liquidated damages as I find them a genuine pre-estimate of their costs of re-renting which includes advertising, showings, checks on new tenants and staff time for this administration.

I find the landlord also entitled to recover \$6.70 for keys not returned and \$89.25 for carpet cleaning. I find the evidence of the move-out report is that the tenants stained

the carpets so they required cleaning and this is an obligation of tenants pursuant to Policy Guideline 1 of the Residential Policy Guidelines.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security and pet damage deposits to offset the amounts owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss November and December 2014	2700.00
Late fee and NSF fees for Nov. & Dec. (2x\$50)	100.00
Carpet cleaning	89.25
Keys not returned	6.70
Liquidated damages	500.00
Filing fee	50.00
Less pet damage and security deposits	-1350.00
Less credit on tenant account	-2.50
Total Monetary Order to Landlord	2093.45

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 05, 2015

Residential Tenancy Branch

