



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:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and utilities, loss of rent revenue, cleaning costs, liquidated damages, to retain the security and pet deposits and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The initial application was served to each tenant via registered mail. The landlord provided copies of the Canada Post tracking information that showed the male tenant signed accepting the mail on October 10, 2014. The female tenant could not be located at the address and the mail was returned.

The agent for the landlord provided affirmed testimony that on November 10, 2014 copies of the amended application, the original application, hearing documents and all evidence was sent to each tenant via registered mail. The landlord used the address provided by the male tenant at the end of the tenancy. The landlord sent the female tenant the documents to a new address provided by that tenant after the tenancy had ended.

The landlord submitted copies of the Canada Post web site tracking information that showed each tenant signed accepting the separate registered mail packages on November 12, 2015

Neither tenant attended the hearing.

Therefore, I find that these documents have been served on November 12, 2015 in accordance with section 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,500.00 for unpaid September 2014 rent?

Is the landlord entitled to compensation for loss of October 2014 rent revenue and liquidated damages in the sum of \$2,000.00?

Is the landlord entitled to compensation in the sum of \$3,572.98 for damage to the rental unit?

May the landlord retain the security and pet deposits in partial satisfaction of the claim?

Background and Evidence

This one year fixed term tenancy commenced on November 1, 2013, rent was \$1,500.00 due on the first day of each month. The tenancy agreement required the tenants to vacate the unit on October 31, 2014. A security and pet deposit in the sum of \$750.00 each was paid. Clause five of the tenancy agreement set out liquidated damages to be paid as a pre-estimate of the cost of re-renting should the tenant end the tenancy before the end of the fixed term.

The tenancy ended based on a 10 day Notice to end tenancy for unpaid rent issued on September 12, 2014. The Notice had an effective date of September 26, 2014. The landlord scheduled a move-out inspection with the tenants for September 26, 2014. The tenants were unable to vacate at that time so agreement was made to meet at 9 a.m. on September 30, 2014. When the landlord went to the unit the tenants did not attend. The inspection report was then completed in the absence of the tenants.

The landlord has made the following claim:

September 2014 rent	\$1,500.00
Loss of October 2015 rent	1,500.00
Late rent payment fee September and October 2014	50.00
Liquidated damages	500.00
Heating oil	1,062.73
Cleaning costs	1,590.00
Fuel to dispose of items and to gather cleaning supplies	76.09
Carpet shampoo purchased by cleaner	12.20
Painting supplies	126.70
Dump fee	10.10
Cleaners	85.50
Bin and dump fees	559.66
TOTAL	\$7,072.98

The landlord provided 22 plus 32 pages of evidence in support of the claim, including invoices, coloured photographs taken of the unit at the end of the tenancy, a copy of the move-in and move-out inspection reports and the tenancy agreement.

The tenants did not pay September 2014 rent in the sum of \$1,500.00.

The unit was left in such disarray that the landlord could not place new tenants in the unit. Advertising supplied as evidence showed the landlord began to advertise on September 3, 2014, when the tenants gave them a verbal indication they would be vacating. The landlord advertised on the company web site, the company's twitter site and two popular web sites. They ads showed the landlord sought the same rent.

The photographs supplied as evidence showed the unit full of abandoned items such as clothes, beds, toys, garbage appliances and food. The fridge was in such poor shape it had to be replaced. The landlord hired a company to leave a bin in the yard, which was filled and hauled to the land-fill. With the unit in the state it was the landlord was unable to locate new tenants until November 2014. The landlord has claimed the loss of October rent revenue.

The condition inspection report supplied as evidence indicated that a number of areas required re-painting. Touch-ups were completed to fix scratches and scrapes on the walls.

The tenants were provided with a filled heating oil tank at the start of the tenancy. The landlord had the tank dipped at the end of the tenancy and then refilled the tank. The tenants were to leave the tank full at the end of the tenancy as their cost for utilities that were not included with rent. Details on the tank levels from the oil company were submitted.

It took 106 hours to clean the home. The cleaner charged \$15.00 per hour. An October 22, 2014 invoice was supplied. The carpets showed evidence of damage caused by the pets.

The landlord claimed the cost of cleaning products and delivery of items to recycling, the dump, the Salvation Army and for supplies purchased for cleaning. This was supported by a fuel receipt.

An invoice for carpet cleaning shampoo and the cleaner used by the person hired to clean were submitted as evidence.

The landlord purchased paint and supplies in the sum of \$126.70. This is supported by a receipt dated October 19, 2014. Scratches and scruffs had to be repaired.

A weigh scale slip for the landfill issued October 8, 2014 in the sum of \$10.10 was submitted as evidence.

The landlord supplied an October 2, 104 receipt for a bin rental drop-off and pick-up and tipping fee totalling \$559.66. The landlord had to remove a large number of items and garbage left by the tenants.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Pursuant to section 36 of the Act, I find that when the tenants failed to attend the move-out condition inspection they extinguished their right to return of the deposits.

From the evidence before me, in the absence of the tenants who were served with Notice of this hearing, I find that the landlord is entitled to compensation as claimed for damage caused by the tenants and pet.

The tenants failed to pay September 2014 rent and I find, from the evidence before me, that they left the rental unit in a state that made re-renting impossible for October 1, 2014. Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean at the end of the tenancy and free from damage outside of normal wear and tear. The photos submitted as evidence show significant belongings left in the unit and evidence that little, to no cleaning was completed.

Due to a breach of the Act by the tenants, by failing to leave the unit reasonably clean and free of personal property, I find the landlord suffered a delay in being able to offer the rental unit to new tenants. Therefore, I find that the landlord is entitled to compensation in the sum claimed for loss of October 2014 rent revenue.

The tenancy agreement required the tenants to pay the cost of utilities. The tenants left the heating oil tank depleted. Therefore, I find the landlord is entitled to the sum claimed for heating oil.

Photos of the bin used to haul away garbage and items left on the rental unit property, combined with the invoice, support the claim for bin and dump fees.

All other portions of the claim were supported by verification of cost, the condition inspection report and photographs.

As the application has merit I find that the landlord is entitled to recover the \$50.00 filing fee that was paid, from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit and pet deposits totalling \$1,500.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$5,622.98. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation as claimed.

The landlord may retain the security and pet deposits.

The landlord is entitled to the filing fee cost.

This decision is final and binding 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: May 28, 2015

Residential Tenancy Branch

