



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 MNR, MND, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 10, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; late and bank fees; liquidated damages and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by both parties on April 7, 2015 for a 1 year fixed term tenancy beginning on May 1, 2015 for a monthly rent of \$825.00 due on the 1st of each month with a security deposit of \$412.50 paid. Clause 5 of the tenancy agreement stated that should the tenant breach the tenancy agreement in manner that caused the landlord to end the fixed term the tenant would have to pay the landlord \$500.00 in liquidated damages. The clause stipulates that this is not a penalty but a reflection of the costs required to re-rent

the rental unit. The agreement also contained an addendum that included Clause 11 which allowed the landlord to charge a late fee of \$25.00 for late payment of rent and \$25.00 as an “NSF” fee;

- A copy of a tenant ledger recording the tenant had failed to pay rent for the months of June, July, and August 2015 and the landlord had applied late and NSF fees to the tenant’s account in the amount of \$100.00; and
- A copy of a Condition Inspection Report signed by the tenant acknowledging owing the landlord unpaid rent and late fees in the amount of \$2,550.00 and \$43.00 for cleaning of the rental unit. This signature also authorizes the landlord to apply his security deposit to the total debt of \$2,593.00.

The landlord’s agent testified that the liquidated damages amount agreed to in the tenancy agreement is based on the landlord’s costs to advertise; prepare and show the rental unit; assess applicants and prepare the unit for re-rental.

The landlord seeks compensation in the following amounts:

Descriptions	Amount
Rent – June; July; August 2015	\$2,475.00
Late/NSF fees	\$100.00
Liquidated Damages	\$500.00
Total	\$3,075.00

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the landlord’s undisputed evidence and testimony I find the tenant has failed to pay rent for the months of June, July, and August 2015 in the amount of \$2,475.00 as claimed by the landlord.

As a result of the non-payment of these rents I find the landlord is entitled to claim late fees as per the addendum of the tenancy agreement. Based on the landlord’s tenant ledger I accept the tenant is also obligated to pay the landlord \$100.00 in late and “NSF” fees as claimed.

And finally, I find clause 5 of the tenancy agreement provides for the landlord to claim \$500.00 as liquidated damages. I accept the landlord’s agent’s testimony that the

amount is based on legitimate costs associated with re-renting the unit and is not a penalty.

I find the tenant, by failing to pay rent, caused the tenancy to end before the end of the fixed term and as such the landlord is entitled to \$500.00 in liquidated damages as claimed.

While I have determined that the landlord is entitled to the total amount claimed I must take note of the authorization the tenant provided to the landlord to apply a portion of the security deposit against the debt for rent and late/NSF fees.

As the authorization allowed the landlord to apply \$43.00 of the security deposit for cleaning which, was not part of this claim, I find there was a balance of \$369.50 that the landlord was authorized to apply to the rent and fees. As such, I reduce the total award to the landlord by \$369.50.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,755.50** comprised of \$2,475.00 rent owed; \$100.00 late/NSF fees; \$500.00 liquidated damages and the \$50.00 fee paid by the landlord for this application less \$369.50 security deposit.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 11, 2016

Residential Tenancy Branch