



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 FF MNR

Introduction

This hearing was convened in response to an application by the corporate landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order for loss pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant’s son, C.B. (the “tenant”), and the landlord’s agent, C.F.W. (the “landlord”) participated in the conference call hearing. They were both given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

On February 23, 2017, the landlord sent the tenant a copy of the Landlord’s Application for Dispute Resolution Package and Monetary Order by way of Canada Post Registered Mail. The tenant confirmed receipt of this package but could not recall the exact date. Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been served with the landlord’s documents and application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for loss as a result of the tenancy?
Can the landlord recover the filing fee?

Background and Evidence

Both parties confirmed that this was a fixed term tenancy that was set to run from September 1, 2015 to August 31, 2016. Rent was \$1,150.00 per month and a security deposit of \$575.00 continues to be held by the landlord. It was explained that the landlord continues to hold the security deposit in lieu of the amount sought in the application for a monetary order. Due to a potential sale of the rental unit, the tenant vacated the suite on June 30, 2016.

The landlord has applied for a monetary order of \$1,150.00 representing unpaid rent for the month of August 2016. The landlord explained that the tenant vacated the rental unit

prior to the end of the fixed term tenancy, and as a result left the landlord with unpaid rent for the month of July and August 2016.

The tenant stated that a potential sale of the rental unit led him to find alternative accommodation for his mother, who was the resident of the suite. He explained that she was elderly and he wanted to mitigate the amount of disruption to her life. After speaking to the former property manager, the tenant stated that he was under the impression that a sale was imminent and his mother would be best served by finding another suite which was immediately available for occupation.

During the course of the hearing it was recognized by the landlord that some back and forth had occurred between the parties concerning a potential sale and that ultimately the owner had acknowledged the inconvenience this had caused. As a result, the landlord informed that the owner was willing to waive rent for July 2016 and was merely seeking a Monetary Order for August 2016. The landlord said the owner recognized that the tenant should not have to pay rent for July 2016 as the result of a mutual misunderstanding surrounding the change in ownership.

The tenant disputed that any money was outstanding on the tenancy agreement. He said a condition inspection was performed by the parties at the end of the tenancy on June 30, 2016, he provided a forwarding address to the landlord, and he was under the impression that no money was left owing.

Analysis

The landlord has applied for a Monetary Order of \$1,150.00 representing unpaid rent for the month of August 2016. She stated that the tenant broke a fixed term tenancy and should therefore be directed to pay the amount owing.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." Little evidence was presented to the hearing demonstrating the steps that the landlord took to mitigate her loss. Furthermore, the

landlord testified that she continues to retain the security deposit in partial satisfaction of the money award sought. I find that the landlord has presented little evidence of any reasonable efforts that were made to minimize the damage or loss. The landlord's application for a monetary order is dismissed.

While no application concerning the tenant's security deposit is presently before me, under *Residential Tenancy Policy Guideline #17* I must consider the matter. This *Guideline* notes, "If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest." This doubling occurs because of the provisions contained in section 38 of the *Act* as described below.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so, has been issued by an arbitrator.

Testimony from both parties confirmed that this tenancy concluded on June 30, 2016. During the hearing, the tenant explained that a forwarding address was provided to the landlord on this date.

Based on the evidence before me, I find that the landlord had the tenant's forwarding address on June 30, 2016 and had until July 15, 2016 to make an application to retain the tenant's security deposit under section 38(1) of the *Act*. This section says, "Except as provided in subsection (3) or (4)(a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the *landlord must repay* any security or pet deposits to the tenant or make an application for dispute resolution claiming against the security or pet deposits." It should be noted that subsection 3 and 4(a) of section 38(1) provide direction on instances where a landlord may retain a security or pet deposit. These are very narrow parameters and apply only when an Arbitrator has previously ordered the tenant to pay the landlord, when a pet or security deposit remains unpaid at the end of the tenancy,

when a tenant agrees in writing, or when an Arbitrator orders that a landlord may retain the amount.

As the landlord had not made any application to retain the tenant's security deposit by July 16, 2016, has not received the tenant's written authorization to retain the security deposit, and acknowledged keeping the security deposit in lieu of money deemed outstanding, the landlord must, pursuant to section 38 of the *Act*, return to the tenant - double the security deposit.

The landlord must bear the cost of her own filing fee for this application.

Conclusion

Pursuant to the *Residential Policy Guideline #17*, when dismissing an unsuccessful application by the landlord, I must order the landlord to return the deposit to the tenant. Therefore, I issue a Monetary Order in the tenant's favour in the amount of \$1,150.00 against the landlord based on the following:

Item	<u>Amount</u>
Return of Double Security Deposit (2 x \$575.00 = \$1,150.00)	\$1,150.00
Total =	\$1,150.00

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 27, 2017

Residential Tenancy Branch