



Dispute Resolution Services

Page: 1

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, MNSD, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:45 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlords' representative (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she sent the tenants individual copies of the dispute resolution hearing and evidence packages by registered mail on March 29, 2017. She entered into written evidence a copy of the Canada Post Tracking Numbers to confirm these registered mailings. She testified that the Canada Post Online Tracking system revealed that both packages were successfully delivered. I am satisfied that the tenants were both deemed served with these packages in accordance with sections 88, 89 and 90 of the *Act* on April 1, 2017.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants'

security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

According to the tenancy agreement entered into written evidence by the landlords and the landlord's sworn testimony, this one-year fixed term tenancy commenced on May 1, 2016, and was to have continued until April 30, 2017. Monthly rent was set at \$1,150.00, payable on the first of each month. The landlords continue to hold the tenants' \$575.00 security deposit, paid on March 17, 2016.

On January 31, 2017, the tenants gave their notice to end this tenancy on March 1, 2017 to the landlord. The landlord testified that they vacated the rental unit on February 14, 2017, without paying their February 2017 rent.

The landlords' application for a monetary award of \$1,770.00 included the following items:

Item	Amount
Unpaid February 2017 Rent	\$1,145.00
February 2017 Late Fee	25.00
Tenants' Portion of Cleaning	300.00
Tenants' Portion of Repainting	300.00
Total Monetary Award Requested	\$1,770.00

The landlords entered into written evidence a copy of the April 29, 2016 joint move-in and February 14, 2017 joint move-out condition inspection reports. Both reports were signed by the landlord. The move-in report was signed by Tenant LM and the move-out report was signed by Tenant MR. In the joint move-out condition inspection report, Tenant MR gave his written permission to allow the landlords to retain \$1,770.00 for the above-noted items listed in that report as damaged or outstanding. The landlords also produced photographic evidence to demonstrate the condition of the rental unit at both the beginning and end of this tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must “leave the rental unit reasonably clean , and undamaged except for reasonable wear and tear.”

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the April 30, 2017 date specified in that agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenants’ failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for February 2017, the last month when they lived in this rental unit.

Based on the undisputed sworn testimony and written evidence in the form of the signed joint move-out condition inspection report, I find that the landlords are entitled to a monetary award of \$1,770.00 to reflect unpaid rent, a \$25.00 late fee as set out in the tenancy agreement, and damage arising out of this tenancy requiring painting and cleaning at the end of this tenancy.

I allow the landlords to retain the tenants’ \$575.00 security deposit plus applicable interest to partially offset the monetary award issued in this decision. No interest is payable over this period. As the landlords were successful in this application, I allow them to recover their filing fee.

Conclusion

I issue a monetary Order in the landlords’ favour under the following terms, which allows the landlords to recover unpaid rent, the late fee for unpaid rent, the filing fee for this

application, damage arising out of this tenancy, and to retain the tenants' security deposit:

Item	Amount
Unpaid February 2017 Rent	\$1,145.00
February 2017 Late Fee	25.00
Tenants' Portion of Cleaning	300.00
Tenants' Portion of Repainting	300.00
Filing Fee	100.00
Less Security Deposit	-575.00
Total Monetary Order	\$1,295.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 29, 2017

Residential Tenancy Branch