



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 MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or part of the tenant's security deposit, to recover the cost of the filing fee and other unspecified relief.

An agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on May 11, 2017 and that the tenant signed for and accepted the package on May 12, 2017 which is supported by the online registered mail tracking website information. A copy of the tracking number has been included on the cover page of this decision for ease of reference. Based on the above, I find that the tenant was served on May 12, 2017 which is the date the tenant signed for and accepted the registered mail package.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on September 1, 2016 and was scheduled to end on July 31, 2017. The agent testified that the tenant breached the fixed term tenancy by vacating early on April 30, 2017. The agent stated that monthly rent was \$1,575.00 per month and was due on the first day of each month. The agent confirmed that the tenant paid a \$775.00 security deposit at the start of the tenancy which is supported by the tenancy agreement. The landlord continues to hold the tenant's security deposit.

The landlord's monetary claim for \$620.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Liquidated damages	\$500.00
2. Lost fob	\$75.00
3. Lost elevator key	\$25.00
4. Kitchen scrap container	\$20.00
TOTAL	\$620.00

Regarding item 1, the agent referred to #5 of the tenancy agreement which sets out the liquidated damages cost at the start of the tenancy as \$500.00 which the parties initialed at the start of the tenancy. Liquidated damages is a pre-determined value of the costs associated with re-renting the rental unit should the tenant breach the fixed term tenancy. The agent testified that the tenant breached the fixed term tenancy by vacating on April 30, 2017 which is earlier than the July 31, 2017 end of tenancy date. The agent also confirmed that the parties did not have a signed mutual agreement to end the tenancy.

Regarding items 2, 3 and 4, the agent referred to the condition inspection report which supports that these items were not returned by the tenant at the end of the tenancy. The agent provided undisputed testimony regarding the value of each of the items 2, 3 and 4 as claimed.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agent, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, and taking into account that I find the landlord's documentary evidence and the agent's testimony support the full monetary claim, I find the landlord's application is fully successful in the amount of **\$620.00**.

In reaching this finding I have considered the condition inspection report, tenancy agreement and other documents submitted in evidence by the landlord. In addition, I find that the tenant breached section 45(2) of the *Act*. Section 45(2) of the *Act* requires that a tenant not end a fixed term tenancy like the tenant did in the matter before me which was before the end of the fixed term and without written permission from the landlord to end the fixed term tenancy early.

As the landlord's claim is successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. Based on the above, I find the landlord has established a total monetary claim of **\$720.00** comprised of \$620.00 for items 1 to 4, plus the recovery of the cost of the \$100.00 filing fee.

I authorize the landlord to retain **\$720.00** of the tenant's \$775.00 security deposit which has accrued no interest to date in full satisfaction of the landlord's monetary claim. I grant the tenant a monetary order pursuant to section 67 of the *Act*, for the security deposit balance owing by the landlord to the tenant in the amount of **\$55.00**.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$720.00 as described above. The landlord has been authorized to retain \$720.00 of the tenant's \$775.00 security deposit which has accrued no interest to date in full satisfaction of the landlord's monetary claim. The tenant is granted a monetary order pursuant to section 67 of the *Act*, for the security deposit balance owing by the landlord to the tenant in the amount of \$55.00. Should the landlord not return the amount of \$55.00 to the tenant, the tenant must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: October 12, 2017

Residential Tenancy Branch