



Dispute Resolution Services

Page: 1

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, MNR, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for unpaid rent, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on February 27, 2018. The Tenant called into the hearing as did a representative for the Landlord, M.R.; both were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

On the Landlord's Application for Dispute Resolution they write "As Agents for the Reg. Owner" after the legal name of the Landlord. Pursuant to section 64(3)(c) of the *Act*, I amend the application to remove this notation.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord retain the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent, M.R. testified as follows. She stated that the tenancy began July 1, 2014. Monthly rent was payable in the amount of \$1,000.00 and the Tenant paid a security deposit in the amount of \$500.00.

M.R. confirmed that the Tenant was the caretaker at the building and as such her rent was reduced to \$1,000.00 per month rather than the market rent of \$1,500.00.

M.R. stated that the tenancy ended when the Tenant vacated the rental unit on or about July 4, 2017.

M.R. confirmed that a 10 Day Notice to End Tenancy was issued on June 7, 2017 by posting to the rental unit door. The outstanding rent was \$1,000.00 at the time. The Tenant paid the outstanding amount on June 12, 2017.

M.R. stated that the Tenant sent an email to M.R. July 4, 2017 indicating that she had left the rental unit. She claimed this was the first time she was aware the Tenant was vacating the rental unit.

In the within action the Landlord sought \$1,000.00 for the July rent, \$25.00 for the N.S.F. fee and \$25.00 for the late fee in addition to the cost to professionally clean the carpets in the amount of \$157.50.

In response to the Landlord's submissions, the Tenant testified as follows. She confirmed she opposed the Landlord's claim for rent for July 2017. The Tenant stated that she gave notice to end her tenancy on June 20, 2017 by an email to C.F., the managing broker, on June 20, 2017 giving her 30 days-notice to end her tenancy. A copy of this email was provided in evidence. The Tenant confirmed that she moved out of the rental unit as of July 1, 2017.

The Tenant confirmed that she did not pay rent for July 2017 although she claimed that the cheque wasn't returned N.S.F.; rather she issued a stop payment for her July 2017 rent cheque.

The Tenant confirmed that she was injured at work for the Landlord and is now receiving W.C.B. benefits. She stated that on or about May 16, 2017 she had to flip over a mattress on the third floor and injured her lower back. She stated that she was terminated from her employment as a resident manager as of August 2017.

The Tenant confirmed that she did not have the carpets cleaned when she moved out and acknowledged that she was responsible for this cost.

M.R. stated that she did not receive written notice from the Tenant, noting that in the June 20, 2017 email the Tenant only wrote "I'm going to have to give my 30-day notice to vacate because I can't afford to stay here while I'm on WCB". She stated that she read this as indicating she would be giving notice, not that she was in fact giving notice.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The Landlord must be in receipt of proper legal notice from a tenant before they can begin advertising a rental unit to others. Section 52 ensures a tenant is serious about ending their tenancy as once a tenant gives notice which complies with that section, it cannot be retracted without the consent of the Landlord. Paragraph 33 of the residential tenancy agreement also provides that the Tenant must give written notice to end her tenancy.

While the email sent from the Tenant to the managing broker indicates she was going to have to give her notice, it does not comply with section 52 as it is not signed, nor does it give the address of the rental unit or state the effective date of the notice. Even in the event this email complied with section 52, the effective date of the notice would be July 31, 2017 pursuant to section 45(1)(b).

I also accept the Landlord's representatives' testimony that they were not aware the Tenant had vacated the rental unit until July 4, 2017.

For these reasons I find the Tenant is responsible for the July 2017 rent and must therefore compensate the Landlord accordingly.

I also find the Landlord is entitled to the \$25.00 N.S.F. fee as the Tenant stopped payment on the cheque causing the cheque to be dishonoured. The Landlord is also entitled to \$25.00 as a late fee. Both the N.S.F. fee and late fee are specifically provided for in the tenancy agreement at paragraph 10.

The Tenant acknowledged she did not have the carpets cleaned as required. I therefore award the Landlord recovery of the associated cost.

As the Landlord has been successful in their application I also award them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is awarded monetary compensation in the amount of \$1,307.50 for the following:

Unpaid rent for July 2017	\$1,000.00
---------------------------	------------

N.S.F. fee	\$25.00
Late fee	\$25.00
Carpet cleaning	\$157.50
filing fee	\$100.00
TOTAL AWARDED	\$1,307.50

The Landlord may retain the Tenant's \$500.00 security deposit as partial payment of the amount awarded and is granted a Monetary Order for the balance due in the amount of **\$807.50**. This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: February 27, 2018

Residential Tenancy Branch