



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 MNDC, MNSD, FF

Introduction

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

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) to the Tenant’s forwarding address by registered mail on October 26, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on October 31, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 1, 2017. Rent of \$1,095.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$547.50 as a security deposit. On or about September 20, 2018 the Tenant sent its forwarding address to the Landlord by email. The Landlord had made more than one offer to conduct a move-out inspection and the

inspection was scheduled for September 30, 2017. In an email dated September 25, 2017 the Tenant informed the Landlord that it had moved out of the unit, would not be attending the move-out inspection, that the unit was left “as is”, and that the Landlord could “keep the \$500.00”. The Landlord takes this to mean that the Tenant agreed in writing that the Landlord could retain the full security deposit.

The Tenant failed to leave the unit reasonably clean and the Landlord claims \$136.50 for garbage removal costs, \$262.50 for cleaning costs, and \$7.50 as the actual cost to replace a missing compost container. The Landlord provides the receipts for the garbage and cleaning costs. The Landlord does not waive any right to retention of the full security deposit.

Analysis

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord, at the end of the tenancy, has made at least two offers for inspection and the tenant has not participated on either occasion. Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Based on the undisputed evidence that the Landlord made more than one offer to conduct a move-out inspection and that the Tenant declined to attend the move-out inspection that was scheduled for September 30, 2017 I find that the Tenant’s right to return of the security deposit was extinguished. Further, given the email and the Landlord’s undisputed evidence of the reasonable interpretation of the meaning of the email I find that that the Landlord has substantiated that the Tenant agreed in writing that the Landlord could retain the full security deposit for the Tenant having left the unit “as is”. For these reasons I find that the Landlord may retain the full amount of the security deposit plus zero interest of **\$547.50**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence of the unit not being left clean and considering the supporting evidence of the photos and condition inspection reports I find that the Landlord has substantiated that the Tenant breached its obligations under the Act

by failing to leave the unit reasonably clean. The Landlord is therefore entitled to the total costs claimed of **\$406.50**. As the Landlord's claims have been successful I find that the Landlord is entitled to the recovery of the **\$100.00** filing fee for a total entitlement of **\$506.50**.

As the Landlord's entitlement of **\$506.50** is less than the entitlement to the security deposit of **\$547.50** I find that these claims are fully satisfied by the retention of the security deposit.

Conclusion

I Order the Landlord to retain the security deposit plus interest of **\$547.50** in full satisfaction of the claim.

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: June 1, 2018

Residential Tenancy Branch