Dispute Resolution Services

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: MNR, MNDC -S, FF

Introduction

This hearing was convened in response to an application by the landlord made March 19, 2019 for a Monetary Order under the *Residential Tenancy Act* (the Act) for loss, unpaid rent and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposits of the tenancy as set off to the monetary claim.

Both parties participated in the hearing. The tenant acknowledged receiving all of the document and photo evidence of the landlord and not providing evidence in response to the landlord's claims. None the less, I accepted the tenant's evidence orally. Each party provided testimony during the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

The hearing proceeded on the merits of the landlord's application. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence *relevant* to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant undisputed evidence is as follows. The tenancy began December 01, 2014

and has since ended. I have benefit of the tenancy agreement. During the tenancy rent in the amount of $1128.00 was payable in advance of the rental period. At the outset of the tenancy, the landlord collected a security deposit and pet damage deposit from the tenant of $525.00 and $235.00 in the sum amount of $760.00, which the landlord retains in trust. The tenancy ended February 28, 2019 pursuant to the effective date of a mutual agreement to end tenancy executed by the parties as provided into evidence.

The parties agreed there is no record that the tenant and landlord conducted a mutual inspection of the rental unit and/or residential property at the start or end of the tenancy as required by the Act. The landlord testified they assumed management of the property subsequent to the start of the tenancy. The tenant testified there was no *move in* condition inspection at the outset of the tenancy but that they never the less began occupancy of the rental unit with certain deficiencies present and an abundance of items and cast offs left behind by the landlord.

The parties agreed the tenant's occupation of the rental unit ended March 15, 2019 following a period of overholding by the tenant of 14 days when the landlord locked the doors to the rental unit and denied them access. However, the landlord claims the parties had orally agreed to a month's "tenancy" for the month of March 2019 for the usual payable monthly rent of $1128.00. The tenant claimed the agreement was for an overholding extension to the middle of March 2019 to allow the tenants extra time to find alternate accommodations. The parties agree that the tenants paid $300.00 after February 28, 2019 for occupancy of the rental unit, for which the landlord expected $1128.00 for the month of March 2019. None the less, the parties agree that a compromised septic tank led to the landlord ultimately collapsing any agreement the parties had by locking the rental unit and preventing access to the tenants.

Landlord's application

The landlord is claiming the "rent" balance owed for March 2019 of $828.00, for which they claim they had contracted. The landlord also seeks $284.47 for an unpaid water bill, and $2268.00 for clearing the residential property of all items claimed were left by the tenant, before the planned demolition of the rental unit to accommodate construction. The tenant did not dispute that the landlord is owed a balance of monies for their occupation of the rental unit beyond the effective end date of the tenancy, nor disputed the claimed unpaid water bill.

The landlord provided a series of photo images of the residential property which they claim the tenant was obligated to clear of an abundance of items including a scooter / motorcycle, a sofa, a "tent workshop", 2 sizeable wooden cable spools, several

appliances including washing machines, an array of furnishings including dressers, coffee table, end tables, several bathroom scales, computer screen, vacuum cleaner, as well as some empty and claimed uncleaned, shelving fixtures and refrigerator, personal effects such as candles and beer cans/cider cans. The landlord also claims that the tenant left behind an abundance of clothing and boxes of other personal effects.

The tenant claims that the majority of large items of appliances, furniture and the wooden cable spools were all left behind by the landlord when they first occupied the residential property. Of note, the parties agreed that the "tent workshop" on the property was left by the landlord. The landlord pointed to a term of the tenancy agreement stating that the tenant agreed that they were responsible for taking down the "tent workshop*" if the landlord requested the tenant to do so.* The landlord claims they orally requested the tenant to remove the workshop. The tenant claims the landlord has never done so. The landlord is claiming "clean-up" costs of $960.00 and $1200.00 for disposal fees.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: ***www.gov.bc.ca/landlordtenant***

The landlord, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant 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.

I find the test established by Section 7 is as follows,

1. *Proof the loss exists,*

2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement*

3. *Verification of the actual amount required to compensate for the claimed loss.*

4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Effectively, the landlord bears the burden of establishing their claims pursuant to the test established by Section 7 above.

Landlord's claim

Section 57 of the Act describes what happens if a tenant does not leave when a tenancy has ended. And, that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy has ended. In this matter I find that pursuant to **Section 44(c)** of the Act the tenancy ended February 28, 2019 pursuant to the parties' written mutual agreement. I find it irrelevant whether the parties then contracted for one month of March 2019 or an understanding the tenant could overhold the rental unit by continuing to use and occupy the rental unit to mid-March, 2019. The fact remains the tenant's occupation, use, *licence to occupy* or tenancy of the rental unit ended when the landlord locked out the tenant on March 15, 2019. I find that the tenant owes the landlord for their use and occupation of the rental unit to March 15, 2019 in the equivalent amount of a half months rent of $564.00. As the tenant satisfied $300.00 of the amount owed, I grant the landlord the balance of **$264.00.**

I find that the landlord has provided undisputed and sufficient evidence to support that the tenant owes an unpaid water bill in the amount of **$284.47**, which I grant the landlord.

The Act allows for a landlord to collect deposits of the tenancy from a tenant and hold the tenant's deposits *in trust* for the duration of the tenancy. I find that the Act requires a landlord to conduct condition inspections at the start and end of a tenancy to establish, by their comparison, how the tenant's deposits of the tenancy should then be administered or considered by the parties upon the tenancy ending. I have not been presented with evidence by the applicant landlord as to the prevalent circumstances or condition of the rental unit at the start of the tenancy. I do not accept that at the end of a tenancy a tenant is responsible to remove from residential property whatever the landlord left on the residential property at the outset of the tenancy. In the absence of a

move in condition inspection report indicating the state of the residential property at the outset of the tenancy I find the landlord has not established an obligation by the tenant to remove those items for which the landlord is now seeking compensation. I find the landlord has acknowledged that, in the least, at the outset of the tenancy the landlord left a "tent workshop" on the residential property. I have not been presented with sufficient evidence that the tenant was notified by the landlord to remove the "tent workshop" so as to comply with the tenancy agreement.

As a result of all the above I am not satisfied that the landlord's loss was the result, solely, of the actions of the tenant in violation of the Act or Tenancy Agreement and therefore wholly responsible for costs of the landlord to clear the residential property of all items before demolition. However, on a balance of probabilities in this matter I find that the landlord has provided sufficient evidence that at the end of the tenancy, or overholding occupation of the rental unit, the tenant did not remove an abundance of their personal items such as clothing, consumable cast offs such as refuse, bathroom scales, computer screens, and used containers such as beer/cider cans. Therefore, I find that the tenant's obligation to compensate the landlord for clearing the residential property is in part. As a result I grant the landlord a portion of their claim in the set amount of **$720.00,** representing1/3 of their claim.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is a follows:

overholding rent / unpaid rent to March 15, 2019	$264.00
Unpaid water bill	$284.47
Removal of tenant's refuse and castoffs	$720.00
landlord's filing fee	$100.00
total of landlord's awards	**$1368.47**
Less tenant's security and pet damage deposits held in trust	*- 760.00*
Monetary Order for landlord	**$608.47**

I Order that the landlord may retain the tenant's security and pet damage deposits of $760.00 in their entirety in partial satisfaction of their award, and **I grant** the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of **$608.47.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part has been granted, and the balance dismissed, without leave to reapply.

This Decision is final and binding.

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 10, 2019

Residential Tenancy Branch