



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 MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$525.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a monetary order for \$1,375.00 of unpaid rent, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, M.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents and evidentiary submissions by Canada Post registered mail, sent on October 26, 2020. The

Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

The Tenant had submitted evidence to the RTB; however, the Agent said that she did not receive anything from the Tenant, which would allow her to know about the Tenant's case. As a result, I did not review or consider the Tenant's evidence in making this Decision.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in her evidentiary submissions and confirmed this at the outset of the hearing. The Agent also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the information in the tenancy agreement she submitted, which states that the fixed term tenancy began on May 1, 2019 and was to run to April 20, 2020, and then be a month-to-month tenancy. The Agent said the Tenant paid the Landlord a monthly rent of \$1,375.00, due on the first day of each month. The Agent said the Tenant paid the Landlord a security deposit of \$687.50, and a pet damage deposit of \$687.50.

The Agent said that the Tenant ended the tenancy by giving the Landlord a notice dated September 11, 2019, in which the Tenant said she would be moving out of the rental unit address as of October 14, 2019, due to work relocation. The Tenant also stated in this notice: "As per lease agreement, \$500.00 to break the lease." This notice was signed by the Tenant.

The Agent said that the Tenant owes the Landlord \$500.00 in liquidated damages for breaking the fixed term lease, pursuant to clause 5 of the tenancy agreement. Clause 5

includes the following:

...if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$ 500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The Agent also pointed out clause 10 of the tenancy agreement, which states:

...Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord.

The Agent said the Tenant's cheque for October 2019 rent was returned as having insufficient funds; therefore, the Agent said that the Tenant owes the Landlord \$1,375.00 in unpaid rent for October 2019, plus a \$25.00 administrative fee for the N.S.F. cheque.

The Agent said the total she is claiming from the Tenant on behalf of the Landlord is as follows:

	For	Authorization	Amount
1	Liquidated Damages for breaking fixed lease	Clause 5 of the tenancy agreement	\$500.00
2	Unpaid rent owing	Clause 5 of tenancy agreement	\$1,375.00
3	N.S.F. fee	Clause 10 of tenancy agreement	\$25.00
4	Recovery of filing fee	Section 72 of Act	\$100.00
		Total monetary order claim	\$2,000.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act states that “if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.”

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly amount due to the Landlord. Pursuant to section 26 of the Act, I award the Landlord recovery of **\$1,375.00** of the unpaid rent for October 2019.

Further, I find that the Tenant breached section 45(2) of the Act, as well as the fixed term tenancy agreement by ending the tenancy before the end of the fixed term. Section 45(2) of the Act states:

Tenant's notice

45 (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.

I find that the Tenant's notice to the Landlord of the end of the tenancy was in breach of section 45(2) of the Act, as well as the fixed term tenancy agreement. I find that the Tenant is liable to pay the Landlord \$500.00 in liquidated damages, as a result. I award the Landlord **\$500.00** from the Tenant, pursuant to section 67 of the Act.

In terms of the Landlord's N.S.F. fee, the *Residential Tenancy Act* Regulation sets out the allowable fees that a landlord can charge:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

. . .

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

. . .

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Accordingly, I find that the Landlord's \$25.00 fee for the Tenant having provided an N.S.F. cheque for October 2019 rent is authorized by section 7 of the Regulation, and I award the Landlord with **\$25.00** from the Tenant.

The undisputed evidence before me is that the Tenant broke a fixed term lease with the Landlord and failed to pay her rent owing to the Landlord in October 2019. Given the evidence before me overall, I find on a balance of probabilities that the Agent provided sufficient evidence to support the Landlord's claims in this matter.

award the Landlord with recovery of a total of \$1,900.00 from the Tenant, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee from the Tenant for a total award of **\$2,000.00**.

Summary and Set off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security and pet damage deposits of \$1,375.00, in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain \$1,375.00 of the Tenant's deposits in partial satisfaction of this claim. I award the Landlord a Monetary Order of **\$125.00** against the Tenant for the remainder of the amount awarded to the Landlord, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is successful in their Application for compensation from the Tenant, as I found that the Tenant breached a fixed term tenancy agreement. The Landlord is awarded \$500.00 in liquidated damages, \$1,375.00 in unpaid rent, a \$25.00 fee for providing the Landlord with an NSF cheque for October 2019 rent, and \$100.00 in recovery of the Application filing fee.

I authorize the Landlord to retain the Tenant's security and pet damage deposits, which total \$1,375.00, in partial satisfaction of this award. I grant the Landlord a Monetary

Order under section 67 of the Act for **\$125.00** from the Tenant for the remainder of the monetary award.

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: March 16, 2020

Residential Tenancy Branch