



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 MNRL-S, MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on May 11, 2021 seeking an order to recover the money for unpaid rent and utilities, compensation for damages to the rental unit, and recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 9, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference all hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Tenant did not attend the telephone conference call hearing.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenants with this Notice of Dispute Resolution Proceeding. This means the Landlords must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the Landlord stated, under affirmed oath, that they used the forwarding postal address via registered mail. This was not returned. They forwarded all evidence they provided to the Tenant via email. This was to an email address they used throughout the tenancy, and after they served the initial Notice of Dispute Resolution the Landlord had received communication from the Tenant using this email in late May.

I accept the Landlord's testimony that they sent notice of this hearing via registered mail and provided evidence to the Tenant via email. Based on the submissions of the Landlord, I accept they did this in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the Tenant's absence. By the *Residential Tenancy Regulation* s.43(2), I find the Landlord properly utilized email to the Tenant to forward the evidence for their Application.

Issue(s) to be Decided

Is the Landlord entitled to compensation for the rent amount owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damages to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The parties signed the agreement on July 26, 2017. The monthly rental amount was \$1,200, payable on the first of each month. The Tenant paid a security deposit and a pet damage deposit for \$600 each. The tenancy started on August 1, 2017, when the Tenant moved in.

Over the course of the tenancy, the rent increased to \$1,279. This is shown in a ledger which the Landlord provided in their evidence.

The Landlord provided a copy of an email from the Tenant dated May 4, 2021, in response to the Landlord's message on April 30. In the May 4 message, the Tenant advised they "vacated the premises on April 30." They cancelled their payment for May 1st rent, and they did not clean the suite. They provided a forwarding address to the Landlord in that same message.

Because of what the Landlord deems late notice advising of the end of the tenancy from the Tenant, they apply for the entirety of rent for the month of May 2021. This is \$1,279.

On their Application, the Landlord noted they returned the pet damage deposit to the Tenant on May 11, 2021. The Landlord makes their Application to apply the held security deposit toward the compensation.

The Landlord testified that they had a voicemail from the Tenant on April 30th, asking for an inspection of the rental unit for that same day. The parties did not have this meeting together before the Tenant moved out from the rental unit. The Landlord visited the rental unit on their own after the move-out, and the Landlord unilaterally completed the "Move In/Move Out Condition Inspection Report" that is in their evidence. Their inspection was on May 4, and that is the date indicated as the vacating date on the inspection report document.

On this document, the Landlord listed a dirty condition in every room in the rental unit. For the yard, the Landlord wrote: "lots of yard waste left in multiple piles – multiple burn sites only couple feet apart". The Landlord indicated deductions for cleaning, unpaid May rent, and hauling, with "TBD" [i.e., to be determined] for the amount. In their evidence the Landlord provided 10 photos showing various details in the unit where cleaning was required. This mostly consists of floors. There are bags of garbage left in the garage. The Landlord provided 9 photos showing burn sites around the yard.

The Landlord in their evidence provided an invoice dated May 9, 2021 for cleaning by a local cleaning firm. This listed cleaning in each room, with "spot cleaned, all the walls, all the closets, all the windows". The total amount of cleaning listed was \$300. The invoice also shows removal of carpet stains and steam-cleaning of the carpeted area, for \$180.

The Landlord provided a separate invoice for additional work, dated May 23. This shows junk removal for \$132, a \$55 disposal fee, and \$264 for removal and disposal of "organic debris." This was where the Tenant had left 4-6 piles of yard waste, and in various areas in the yard was burning the waste.

A separate letter to the Tenant, dated May 11, is in the Landlord's evidence. This advises the Tenant that the tenancy had ended and given that fact "it is no longer acceptable for you to be on the property." The Landlord did not provided details on this in the hearing. The letter also advises the Tenant that they "neglected to provide proper notice, nor attend the move out inspection".

Analysis

From the testimony and evidence of the Landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the amount of the security deposit paid.

The *Act* s. 45(2) sets out how a Tenant may end a tenancy:

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.

In this case, the evidence of the landlord is that the tenant breached the tenancy agreement by abandoning the rental unit on April 30, 2020. The Tenant's own statement to the Landlord was on May 4th, after they vacated on April 30th. Under the *Act* and the tenancy agreement, the Tenant was obligated to give notice to end the tenancy for an effective date in line with s. 45(2).

I accept the evidence before me that the Tenant here did not do so. Both the lack of notifying the Landlord in the proper time, and the following non-payment of rent are breaches of the *Act*. The Landlord's loss results from this breach; therefore, I find the Landlord is entitled to the full amount of May rent. This is \$1,279.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord's claim concerns damages arising from the tenancy and other cleaning costs. To determine the Landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

I find the Landlord established there was a need for thorough cleaning in the rental unit. This is borne out by the evidence on the Condition Inspection Report, which I am satisfied represents an accurate viewing of the unit with days of the Tenant's last appearance there. The Landlord provided photos showing miscellaneous points therein. I so award \$300 to the Landlord for the cost they paid for cleaning as detailed on the provided invoice.

The Landlord did not present evidence to show there was a need for carpet cleaning; therefore, I dismiss this portion of the Landlord's claim. I am not satisfied damage in this form existed.

I am satisfied that yard cleanup was one of the basic points established in the tenancy agreement as an obligation of the Tenant. From the evidence, I am satisfied this did not occur. The photos provided by the Landlord show the extent of work involved; therefore, I am satisfied that the invoice they present for hauling and disposal represents the amount of work involved. I so award \$451 to the Landlord as compensation, for completed work they paid for.

The Landlord properly made a claim against the security deposit and has the right to do so. The Landlord is holding the amount of \$600. I order this amount deducted from the recovery of the rent amount and utilities of \$2,030. This is an application of s. 72(2)(b) of the *Act*.

As the Landlord is successful in this application, I find that the Landlord is entitled to recover the \$100 filing fee they paid for this Application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,530. I provide the Landlord with this Order, and they must serve **this Order** to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 6, 2021

Residential Tenancy Branch