



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of a security deposit, and to recover the filing fee.

The tenants and the agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants stated that they received the application and evidence package from the landlord and had an opportunity to review it prior to the hearing. I find the tenants were served in accordance with the *Act*.

Issues to be Decided

- Should the landlord be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to retain all or part of the security deposit?
- Should the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted as evidence. According to the fixed term tenancy agreement, rent was due on the first day of each month in the amount of \$1,150.00. The fixed term tenancy began on May 15, 2011 and expired on June 1, 2012. The tenants paid \$575.00 as a security deposit in May 2011.

The tenants stated that they delivered their written notice to the landlord on April 1, 2012, indicating that they intended to vacate the rental unit on April 30, 2012. The agent

for the landlord stated that she received the tenants' written notice on April 2, 2012, as the notice was placed through her mail slot.

The agent for the landlord stated that prior to receiving the written notice from the tenants, the tenants asked her when their tenancy agreement was to expire as the tenants misplaced their copy of the tenancy agreement. The agent for the landlord testified that she stated the end of May, 2012. The tenants disputed the testimony of the agent by stating the agent stated to them "the first", but did not provide the month, so they assumed the agent was referring to May 1, 2012 and not June 1, 2012 as the end of the tenancy. As a result, the tenants assumed their notice had been accepted by the landlord.

The tenants vacated the rental unit on April 30, 2012. The tenants stated that 2 rental unit keys were stolen months earlier and were aware that there was a \$50.00 fee for the 2 keys, after being advised by the agent for the landlord. The tenants testified that they were advised of the \$50.00 drape cleaning charge at the move-out inspection. The move-out inspection report was submitted as evidence.

One tenant signed the security deposit statement at the bottom of the move-out inspection report on April 30, 2012. The portion the tenant signed indicated that he agreed with the condition of the rental unit, and to the charges including window cover cleaning in the amount of \$50.00, key replacement in the amount of \$50.00, and \$1,150.00 for unpaid rent for May 2012, less the security deposit of \$575.00 for a total amount owing to the landlord of \$675.00. These amounts are consistent with the amounts detailed in the landlord's application for a monetary order.

The landlord provided copies of the tenant's written notice, and the condition inspection report as evidence for this proceeding. All relevant evidence has been considered in this Decision.

Analysis

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

Claim for May 2012 rent– The agent for the landlord testified that rent in the amount of \$1,150.00 was not paid for May 2012. The agent stated that the fixed term tenancy did not expire until June 1, 2012 and as a result, the tenants were expected to pay rent for May 2012. The written notice from the tenants was dated April 1, 2012 and indicated that they were vacating the rental unit on April 30, 2012, which they did.

Section 45 of the *Act*, states:

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 or, in relation to an assisted or supported living tenancy, of the service 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*].

Based on the tenants' testimony, I find the tenants breached section 45 of the *Act*. The tenants did not provide written notice to the landlord that is not earlier than one month after the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenants are not permitted under the *Act* to end a fixed term tenancy agreement early, and did not make a claim against the landlord that the landlord breached a material term of the tenancy agreement.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have breached a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$1,150.00** for unpaid rent for May 2012.

The landlord is holding a security deposit of \$575.00, which was paid by the tenants in May 2011. The security deposit has accrued no interest since May 2011.

Claim for drape cleaning and keys – During the hearing, the tenants accepted the \$50.00 fee for replacing the 2 keys that were allegedly stolen from the tenants months prior. The tenants also accepted the \$50.00 fee for drape cleaning inside the rental unit. Therefore, I award the landlord a monetary claim of **\$100.00** pursuant to section 67 of the *Act*, consisting of \$50.00 for drape cleaning and \$50.00 for key replacement.

As the landlord was successful in their application, I grant the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlords are entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Unpaid rent for May 2012	\$1,150.00
Drape cleaning	\$50.00
Key replacement fee	\$50.00
Filing fee	\$50.00
Subtotal	\$1,300.00
Less security deposit	(\$575.00)
TOTAL	\$725.00

Conclusion

I find that the landlord has established a total monetary claim of **\$1,300.00** as indicated above. I order that the landlord retain the security deposit of \$575.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$725.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 11, 2012

Residential Tenancy Branch