



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on January 16, 2013 to an address provided by the tenants. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damages?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started with all three tenants on January 01, 2012 for a fixed term which ended on December 31, 2012. The parties had the option of continuing the tenancy after this time on a month to month basis. Rent for this unit was \$850.00 per month plus \$50.00 for parking. The tenants paid a security deposit of \$425.00 on December 20, 2011. The parties attended the move in and the move out condition inspection of the unit. The tenants provided a forwarding address on the move out report on December 31, 2012 as the tenants were vacating the rental unit.

The landlord's agent testifies that the move out report indicates that there were areas of the unit left unclean. The tenant who attended the inspection with the landlord's agent signed the move out report giving the landlord permission to deduct the sum of \$110.00 from the security deposit for this cleaning.

The landlord's agent testifies that the female tenant sent the landlord's agent a text message on November 30, 2012 inquiring about the process if two tenants moved out. The landlord's agent testifies that she called the tenant back and spoke about the process that if two tenants were to move out then the remaining tenant would have to have any roommates checked by the landlord before they could occupy the rental unit.

The landlord's agent testifies that she did not hear anything else so called the tenant back on December 24 to see what was happening before the holidays. The landlord's agent testifies that the tenant informed the landlord that they had left the landlord's agent a written notice. The landlord's agent testifies that she explained to the tenant that she had not received a written notice from the tenants. The landlords agent testifies that when she reframed to her office an hour later there was a notice from the tenants dated November 30, 2012 which the tenant must have pushed through the landlords mail slot in the door as it was lying on the floor in the office. This Notice had been signed by all three tenants.

The landlord's agent testifies that she wrote to the tenants informing the tenants that due to the late notice the tenants would still be responsible for rent for January, 2013 of \$850.00. The landlord's agent testifies that they did not hear back from the tenants.

The landlord seeks an Order to keep the tenants security deposit in partial satisfaction of this claim.

The landlord has provided a copy of the tenancy agreement, the tenants notice and the move in and move out inspection reports in documentary evidence.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I refer the parties to s. 45(2) of the *Act* which states:

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 order for the tenants notice to be effective on December 31, 2012 the notice must be received by the landlord by November 30, 2012. The tenants notice provided in evidence is dated for November 30, 2012 however the landlord's agent has testified that this was not received by the landlord's agent until December 24, 2012. Therefore I find that the landlord has established a claim for unpaid rent for January, 2013 as the earliest the tenants could end the tenancy would have been January 31, 2013.

With regard to the landlords claim for cleaning costs of \$110.00 as one of the tenants has signed the move out condition inspection report giving the landlord permission to keep the sum of \$110.00 from the security deposit then I am not required to deal with this section of the landlords claim. This sum will therefore be deducted from the security deposit as agreed by this tenant.

With regard to the balance of the security deposit I find the landlord is entitled to keep this pursuant to s. 38(4)(b) of the Act in partial satisfaction of the loss of rent for January, 2013.

The landlord is entitled to keep recover the filing fee of \$50.00 pursuant to s. 72(1) of the Act.

A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the Act as follows:

Unpaid rent	\$850.00
Cleaning	\$110.00
Subtotal	\$960.00
Less security deposit	(-\$425.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$585.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$585.00. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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: April 10, 2013

Residential Tenancy Branch

