



Dispute Resolution Services

Page: 1

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 MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the tenant was served with the Notice of Hearing and evidence on June 7, 2013 by registered mail to the forwarding address provided by the tenant at the outgoing condition inspection on May 29, 2013. A copy of the registered mail receipt was submitted as documentary evidence in support of the agent’s testimony. The agent testified that he confirmed that the registered mail package was successfully delivered to the tenant by logging on to the post office website which indicated that the package had been successfully delivered. The tenant did not attend the hearing. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after the documents are mailed. Therefore, I find the tenant was sufficiently served in accordance with the *Act*. I note that refusal of service does not constitute grounds for a Review.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The written tenancy agreement was submitted in evidence which indicates that a fixed term tenancy began on April 1, 2012, and reverted to a month to month tenancy after a period of six months. Monthly rent in the amount of \$750.00 was due on the first day of each month. A security deposit of \$375.00 was paid by the tenant, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,966.61 comprised of the following:

1. Total maintenance charges	\$465.00
2. Portion of unpaid March 2013 rent	\$1.61
3. Unpaid April 2013 rent	\$750.00
4. Loss of May 2013 rent	\$750.00
TOTAL	\$1,966.61

The landlord submitted an incoming condition inspection report in evidence. In that report, the date the report was completed is missing. In addition, the incoming condition inspection report was not fully completed. The only areas where a condition of the items listed were noted was the kitchen stove/stove top, Living room floor/carpet, and master bedroom windows/coverings/screen. The remainder of the items were not completed as to their condition at the start of the tenancy.

The landlord submitted a document entitled "Move In / Move Out / Charge Analysis" (the "Charge Analysis") in evidence. The agent stated that the Charge Analysis document was also the outgoing condition inspection report. The agent acknowledged that the Charge Analysis document did not match all of the items listed in the incoming condition inspection report. In addition, the Charge Analysis document has an amount listed next the items which the agent stated is the landlord's cost including labour for the value of each item.

The agent described each of the items listed on the Charge Analysis document which are the “maintenance charges” being claimed in the amount of \$465.00 as follows:

Item Description	Hand written notes	Amount claimed
Stove/oven	“filthy”	\$40.00
Fridge	“needs light clean”	\$15.00
Sink/countertop	“drainer filthy”	\$10.00
Other – fan	“dirty”	\$10.00
Bathroom sink/vanity	“filthy”	\$15.00
Toilet	“filthy”	\$30.00
Living room windows/screens	“blinds missing and not turning”	\$50.00
Bedroom (1) windows/screens	“filthy – replace”	\$35.00
Bedroom (1) light fixtures	“2 bulbs”	\$10.00
Other	“Hallway garbage”	\$250.00
TOTAL		\$465.00

The agent confirmed that he did not submit any photographs, receipts, invoices or other documentary evidence to support the amounts listed on the Charge Analysis document. The agent testified that there were no details provided on the Charge Analysis to indicate how many hours were being charged for any of the items. The agent stated that the tenant was present when the Charge Analysis document was completed, however, the tenant refused to sign the Charge Analysis.

The agent testified that when the tenant vacated on May 29, 2013, the tenant still owed \$1.61 for March 2013 rent, \$750.00 for April 2013 rent, and \$750.00 for May 2013 rent. The agent stated that the tenant was served with a two day order of possession dated May 1, 2013 in early May 2013, however, the tenant was overholding in the rental unit until May 29, 2013. The landlord is requesting to retain the tenant’s full security deposit towards their claim for unpaid rent.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Claim for maintenance costs of \$465.00 – The landlord has claimed \$465.00 for “maintenance charges” which are described in detail earlier in this Decision. The incoming condition inspection report submitted in evidence was not dated and was not fully completed by the landlord or the landlord’s agent. All but three items were missing the agreed upon condition at the start of the tenancy.

Section 23 of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy in accordance with the Regulation. **I find** the landlord failed to fully complete the incoming condition inspection. Furthermore, the Charge Analysis document submitted in evidence indicates \$465.00 in “maintenance charges” that the landlord is requesting the tenant to pay, however, the landlord failed to provide any photographs, invoices, receipts or details regarding of the amount of hours being charged for each item. Therefore, **I find** the landlord has failed to meet the burden of proof to prove this portion of their claim. At the very least, the landlord should have fully completed the incoming and outgoing condition inspection reports, which the landlord did not do. In addition, the landlord should have provided photographs, invoices or other supporting evidence regarding the amounts being claimed. Based on the above, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

Claim for unpaid rent and loss of rent – The agent testified that when the tenant vacated on May 29, 2013, the tenant still owed \$1.61 for March 2013 rent, \$750.00 for April 2013 rent, and \$750.00 for May 2013 rent. The agent stated that the tenant was served with a two day order of possession dated May 1, 2013 in early May 2013, however, the tenant was overholding in the rental unit until May 29, 2013. Section 26 of the *Act* states that a tenant must pay rent when it is due whether or not the landlord complies with the *Act*. Therefore, **I find** the tenant breached the *Act* by failing to pay \$1.61 owing for March 2013 rent, \$750.00 owing for April 2013 rent, and that the landlord suffered a loss of rent of \$750.00 for May 2013 due to the tenant overholding in the rental unit before vacating on May 29, 2013. Based on the above, **I find** the landlord has met the burden of proof and has established a monetary claim in the amount of **\$1,501.61** comprised of \$1.61 owing for March 2013 rent, \$750.00 owing for April 2013 rent, and \$750.00 for loss of May 2013 rent.

As the landlord was successful with the majority of their claim, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**. The landlord continues to hold the tenant's security deposit of \$375.00 which has accrued \$0.00 in interest to date.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$1,551.61** comprised of \$1,501.61 in unpaid rent and loss of rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$375.00. **I authorize** the landlord to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,176.61**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim in the amount of \$1,551.61. I authorize the landlord to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of \$1,176.61. This order must be served on the tenant and 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: September 13, 2013

Residential Tenancy Branch

