



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: MNDC MNSD OLC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 45 and 67 for rental loss due to insufficient notice to end tenancy and breach of a fixed term lease;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of rent for June 2013 and the balance of her security deposit.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant's breach of a fixed term lease caused rental loss for July 2013 and that they are also entitled to the fee of \$350 for breaching the lease? Is the landlord entitled to recover filing fees also?

Has the tenant proved on the balance of probabilities that the unit was uninhabitable and that she is entitled to a refund of rent paid plus the balance of her security deposit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on June 1, 2013 on a fixed term lease to November 2013, that rent is \$1100 a month and a security deposit of \$550 was paid in March 2013. It is undisputed that the tenant viewed

the suite on May 8, 2013 and filled out an application, then signed a condition inspection report on June 1, 2013 when she moved in. The landlord said they spent a lot of time looking at the unit on both occasions and there was no mention of mice or cockroaches and she observed none. The landlord said the previous tenants had no pets or children and had lived in the unit for two years in a hygienic manner. The landlord said the tenant vacated on June 12th when she returned the keys and complained of cockroaches and mice. She had not complained of cockroaches or mice previously or allowed them to address the problem if there was one. The landlord said pest control treated the unit and she saw a few dead cockroaches on the floor; they were able to re-rent the unit for July 1, 2013 so are only claiming the \$350 fee as outlined in clause 4 of the rental agreement to cover their administrative costs resulting from the breach of the lease.

The tenant said that the unit was infested with cockroaches and mice but she had submitted no documentary evidence of this because she did not understand the necessity of evidence. She said she has 4 children and a pet and she could not find another unit until September but she could not stay in this unit because the cockroaches had infested her furniture. She only took her clothes and dishes when she left. She said she never saw the bugs initially because there were tenants occupying the unit when she looked at it. It is a ground floor unit with bushes outside and she said the neighbours told her when she complained of bugs that if she informed the landlord, the landlord would spray and treat the problem. She requests \$1100 rent refund for June 2013 and the balance of her security deposit; she says she accepts the \$350 fee deduction as she knows the landlord incurred costs through her breach of the lease.

In evidence are the lease and the signed move-in condition inspection report.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

As explained in the hearing, the onus is on the applicant on each claim to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving the tenant breached the fixed term lease agreement as their evidence is well supported by the copy of the lease and the tenant's statements. Under clause 4 of the lease, the tenant has agreed that \$350 may be deducted from her security deposit if she breaches the fixed term lease to cover the administrative costs of the landlord such as cleaning, advertising and showing the unit to prospective tenants. I find the landlord entitled to recover \$350 for their administrative costs.

I find the landlord mitigated their damages by re-renting for July 1, 2013 and therefore claims no rental loss for July.

On the tenant's application, the onus is on her to prove on the balance of probabilities that she is entitled to a refund of rent for June 2013 and to the return of the balance of her security deposit. Although the tenant graphically described an infestation of cockroaches and mice that caused her to end her tenancy on June 5, 2013, I find insufficient evidence to support her statements. Furthermore her statements are inconsistent with the condition inspection report that she signed on June 1, 2013 on which she noted no problems.

She did not return the keys until June 12, 2013 and the landlord filed the Application for Dispute Resolution on June 18, 2013 which I find is within the 15 day limitation in section 38 of the Act to claim against the deposit. . She recounted the hardship she had in losing furniture and finding another unit with 4 children and a pet; however, I find she did occupy this unit for some days in June 2013, she did not complain to the landlord to have the problem corrected but chose to move out instead. I find she is not entitled to a refund of rent for June 2013 but is entitled to recover the balance of her security deposit as calculated below.

Conclusion:

I find the landlord is entitled to recover costs as calculated below and to the filing fee for this application. I find the tenant is entitled to a monetary order for the balance of her security deposit as calculated below. No filing fee was incurred by the tenant.

Calculation of Monetary Award:

Administrative Costs to re-rent to landlord	-350.00
Filing fee to landlord	-50.00
Security deposit of tenant (no interest 2013)	550.00
Monetary Order to Tenant for balance	150.00

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: September 24, 2013

Residential Tenancy Branch

