



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 MNSD MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 15, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security and pet deposits; for damage to the unit, site, or property, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on October 21, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on October 26, 2013, five days after it was mailed, in accordance with section 90 of the Act; therefore I proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties entered into a written fixed term tenancy agreement that began on June 1, 2011, and which also indicated the Tenant was granted possession of the unit as of May 21, 2011. Rent is payable on the first of each month in the amount of \$750.00 and on or before the onset of the tenancy the Tenant paid \$375.00 as the security deposit and paid \$200.00 as the pet deposit. Both parties attended the move-in inspection and signed the condition inspection report form on May 18, 2011.

The Landlord testified that on September 2, 2013, the Tenant provided notice to end her tenancy effective September 30, 2011 and in that notice she also provided her forwarding address. The Landlord stated that he had had conversations with the Tenant about when she would be leaving so he knew they were planning to leave really early on the morning of October 1, 2013. He confirmed that he did not attempt to schedule a move out inspection as he had an understanding with the Tenant that she would be leaving the unit in good shape when she left. He completed the move-out charge form in the Tenant's absence and sent her a copy registered mail, with their evidence, on October 21, 2013.

The Landlord submitted that he was seeking compensation of \$750.00 for loss of rent for October 2013 due to the Tenant's late notice. He argued that they advertised immediately on various websites and they were not able to re-rent the unit until January 1, 2014.

The Landlord stated that he is also seeking \$280.00 for costs for cleaning and minor repairs. He pointed to his evidence which included their move out charge form and noted that the Tenant left the kitchen appliances and surfaces requiring cleaning, the bathroom required cleaning, and there was a missing sink stopper and tub stopper. He noted that there was also damage to the wall in the bedroom caused from the Tenant's pet scratching and some minor damage to the window blind.

The Landlord clarified that the amounts charged are based on their flat rate charge out sheet. He confirmed they did not keep track of the actual time it took to clean the unit and did not submit invoices for any of the materials that may have been purchased.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Upon review of the Landlord's claim I find the amounts claimed for cleaning and minor repairs to be reasonable, given the circumstances presented to me during this proceeding.

Based on the above I find the Landlord has met the burden of proof and I award damages and cleaning costs in the amount of **\$280.00**.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

Based on the above, the Tenant's notice provided on September 2, 2013, would not be effective until October 31, 2013. That being said, the Tenant vacated the property as of the early morning hours of October 1, 2013, and did not pay rent for October 2013. The Landlord was not able to re-rent the unit until January 1, 2014, despite his efforts to do so. Therefore, I find the Landlord suffered a loss of rent for October 2013, due to the Tenant ending the tenancy in breach of section 45(1) of the Act. Accordingly, I award the Landlord loss of October 2013 rent in the amount of **\$750.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit plus interest as follows:

Damages & repairs	\$ 280.00
Loss of Rent for October 2013	\$ 750.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,080.00
LESS: Pet Deposit \$200.00	-200.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-537.50</u>
Offset amount due to the Landlord	<u>\$ 342.50</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$342.50**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 29, 2014

Residential Tenancy Branch

