



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 FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for authorization to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent presented the landlord's evidence. A summary of the landlord's evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") was considered. The agent testified that the Notice of Hearing and Application was served on the tenants by registered mail on December 4, 2013. The agent provided two registered mail receipts with tracking numbers in evidence and confirmed that the name and addresses matched the names of the tenants and the forwarding address provided by the tenants on the outgoing condition inspection report which was submitted in evidence. According to the registered mail tracking website, both packages, one for each tenant, were signed for on December 11, 2013. Based on the above, I accept that both tenants were served as of December 11, 2013, in accordance with the *Act*.

Preliminary and Procedural Matter

At the outset of the hearing, the agent requested to reduce the landlord's monetary claim from \$1,200.00 to \$459.70, comprised of a lease breaking fee/liquidated damages of \$350.00, plus the portion of lost revenue for the month of December 2013 of \$109.70.

I find that such a reduction in the landlord's claim does not prejudice the tenant and have permitted the reduction in the landlord's claim as a result.

Issues to be Decided

- Has the landlord provided sufficient evidence to support their monetary claim under the *Act*?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2013 and was scheduled to revert to a month to month tenancy after June 1, 2014. Monthly rent in the amount of \$850.00 was due on the first day of each month. The agent stated that a security deposit of \$425.00 and a pet damage deposit of \$200.00 were paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The agent stated that on November 26, 2013, the tenants provided written notice by way of a document dated November 24, 2013, that they would be vacating the rental unit by midnight on November 30, 2013. The agent stated that the tenants vacated the rental unit on November 29, 2013.

The landlord is claiming \$350.00 for liquidated damages pursuant to section 4 of the tenancy agreement, plus \$109.70 for loss of rent for the month of December 2013, which is the balance of lost revenue the landlord could not recover from the new renters who moved into the rental unit on December 6, 2013, and paid \$740.30 for rent for December 2013.

The agent testified that the landlord had to advertise the rental unit on two websites, respond to many telephone call enquiries, and arranged for three viewings until they successfully found new renters to re-rent the rental unit effective December 6, 2013.

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.

Landlord's claim for liquidated damages – The agent referred to section 4 of the tenancy agreement which I find supports that the tenants were aware that if they breached the fixed term tenancy, they would be responsible to pay the landlord \$350.00 in liquidated damages. The tenants did breach section 45 of the *Act* by breaching a fixed term tenancy having vacated the rental unit on November 29, 2013, even though the tenancy agreement was for a minimum of twelve months and did not revert to a month to month tenancy until June 1, 2014. Therefore, I find the landlord has met the burden of proof for this portion of their claim and is entitled to **\$350.00** for liquidated damages.

Landlord's claim for loss of portion of December 2013 rent – As described above, the tenants breached section 45 of the *Act*, by breaching a fixed term tenancy agreement. Section 7 of the *Act* requires that a landlord do whatever is reasonable to minimize their damage or loss. I find the landlord did comply with section 7 of the *Act* by securing new renters effective December 6, 2013, after the tenants vacated the rental unit on November 29, 2013. I accept that the landlords were able to reduce their loss of revenue for the month of December 2013 from \$850.00 by receiving \$740.30 from the new renters, resulting in a loss of revenue for December 2013 in the amount of \$109.70. Therefore, I find the landlord has met the burden of proof for this portion of their claim and is entitled to **\$109.70** for the loss of revenue for December 2013.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$509.70** comprised of \$350.00 for liquidated damages, \$109.70 for loss of that portion of

December 2013 rent, plus the recovery of the \$50.00 filing fee. **I ORDER** the landlord to retain \$509.70 from the tenants' \$425.00 security deposit and \$200.00 pet damage deposit, neither of which have accrued interest since the start of the tenancy, in full satisfaction of the landlord's monetary claim. **I ORDER** the landlord to immediately return the tenants' security deposit balance owing of **\$115.30**. Should the landlord fail to immediately return the tenants' security deposit balance of \$115.30, **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$115.30.

Conclusion

The landlord established a total monetary claim in the amount of \$509.70 comprised of \$350.00 for liquidated damages, \$109.70 for loss of that amount of December 2013 rent, plus the recovery of the \$50.00 filing fee.

The landlord has been ordered to retain \$509.70 from the tenants' \$425.00 security deposit and \$200.00 pet damage deposit, in full satisfaction of the landlord's monetary claim.

The landlord has also been ordered to immediately return the tenants' security deposit balance owing of \$115.30. Should the landlord fail to immediately return the tenants' security deposit balance of \$115.30, the tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$115.30. Should the tenants require enforcement of the monetary order, the tenants must serve the landlords with the monetary order, and may file the monetary order in the Provincial Court of British Columbia (Small Claims).

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: April 10, 2014

Residential Tenancy Branch

