



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Century Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on July 15, 2013 on a fixed term to July 14, 2014. Rent of \$2,500.00 was payable monthly on the 15th day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit. The tenancy ended on March 15, 2014. The Parties mutually conducted a move-in and move-out inspection and completed reports. The Tenant provided its forwarding address by email to the Landlord on April 11, 2014. A new tenancy agreement was entered into with a new tenant starting March 15, 2014 for a one year and 46 day term.

The Landlord provided a copy of an agency agreement for the period January 8, 2013 to December 31, 2013 indicating payment of 5% of the monthly rent plus taxes to act as the landlord's agent and carry out the responsibilities of the Landlord including the advertisement and renting of the unit during this period. The Landlord claims \$2,500.00 plus \$125.00 GST for the cost of re-renting the unit earlier than expected, costs to attend the move-out inspection with the Tenant and costs to conduct a move-in inspection with the new tenant.

Upon the new tenant moving into the unit it on April 1, 2014 it was discovered that the patio door would not close. The move-out inspection does not indicate any problem with the unit. The Landlord claims the repair of the door in the amount of \$280.00.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Tenant ended the fixed term early, and even if a second agency agreement were entered into for the following year, there is no evidence that the Landlord incurred a greater cost than provided for in the agency agreement to carry out the Landlord's obligations because of this breach. There is also nothing in the tenancy agreement that requires the Tenant to pay such costs if the fixed term is breached. As such I dismiss the claims of the Landlord for costs associated with the fulfilment of the Landlord's obligations including the move in and move out fees. As the Landlord has provided no evidence that the Tenant damaged the patio door and considering the move-out report that does not note any such damage, I find that the Landlord has not

substantiated that the Tenant caused the damage to the door and I dismiss this claim. AS none of the Landlord's claims have been successful, I decline to award recovery of the filing fee and the application is in effect dismissed.

I order the Landlord to return the security deposit of \$1,250.00 plus zero interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$1,250.00**. If necessary, this order may be filed in the 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: August 18, 2014

Residential Tenancy Branch

