



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, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order

- for damage to the unit;
- for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement;
- to retain all or part of the security and/or pet deposit
- to recover the RTB filing fee

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy agreement signed by the parties July 31, 2013 indicates the tenancy started August 1, 2013 and was for a fixed term of 12 months. The tenants were obligated to pay rent of \$795.00 per month payable in advance on the first day of the month. They also paid a security deposit of \$397.50 and a pet deposit of \$200.00.

The landlord gave evidence that the tenants gave notice March 30, 2014 that they would be moving out by April 30, 2014. They then moved out on April 19, 2014.

The landlord gave evidence that they run advertisements for new tenants 24/7, and normally advertise on Craigslist and Kijiji. He does not know for certain when they first showed this rental unit to new prospective tenants, however he says they would have prioritized the unit.

The landlord says they are claiming a “lease-breaking fee” and rent discounts from the tenants, but not any loss of revenue.

The “lease-breaking fee” is set out at paragraph 4 of the Tenancy Agreement:

“Rental Period & Terms of Tenancy: The tenancy created by this agreement commences Aug 1, 2013 And continues on NOT LESS THAN 12 MONTHS until cancelled in accordance with the Act. However if the Tenant terminates the tenancy in less than 12 months \$350.00 + Concession will be charged by the Landlord and the Tenant will pay this amount as a service charge for tenancy change over costs, such as advertising, interviewing, administration, re-renting for this short-term tenancy. This is not a penalty.”

The rent concessions or discounts are set out in the Rental Incentive Agreement, signed by the tenants on July 31, 2013, which reads in part:

“If in any case the tenant breaks the lease within the specified time, any and all lease incentives agreed upon during the lease term will immediately due and payable to Mainstreet Equity Corp.”

The landlord gave evidence that the tenants’ rent was discounted by \$66.00 per month so that they only paid \$729.00 for the nine months they lived there, rather than the \$795.00 specified in the tenancy agreement. The total amount of the concessions was \$594.00 (\$66.00 x 9 months).

The landlord provided a copy of a “Move In / Move Out – Charge Analysis”, which states total maintenance charges will be \$50.00. The documents is dated April 19, 2014 and signed by the tenant.

The tenants gave evidence that the manager told them as long as the rental unit was rented out, they would get their deposit back. They say it was not very clear at move out what the charges would be.

Analysis

Allowable non-refundable fees are set out in Residential Tenancy Regulation section 7. Section 7 does not include provision for a lease breaking fee or service charge. I note that Section 5 of the Residential Tenancy Act does not permit parties to contract out of

the provisions of the Act or regulations. For those reasons, I cannot award the \$350.00 fee set out in paragraph 4 of the Tenancy Agreement.

I find the landlord is entitled to recover the concession amounts totalling \$594.00 because the total rent amount of \$795.00 is set out in the Tenancy Agreement and the parties agreed the tenants would have to refund any discounts to this amount if they moved out before the end of the fixed term.

I find the landlord is also entitled to the \$50.00 maintenance fee because the tenants agreed to it at the time of the move-out inspection. The landlord is also entitled to recover their RTB filing fee of \$50.00.

The total amount due the landlord is \$694.00, comprised of \$594.00 concessions, \$50.00 maintenance fee, and \$50.00 RTB filing fee. I order that the landlord retain the security deposit of \$397.50 and the pet deposit of \$200.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$96.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of \$96.50. The landlord may also retain the pet deposit and the security deposit.

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 19, 2014

Residential Tenancy Branch

