



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 by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), to keep all of the Tenant’s security deposit, and to recover the filing fee for the cost of the Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing.

There was no appearance by the Tenant during the 12 minute duration of the hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the Notice of Hearing documents by the Landlord to the Tenant.

The Landlord’s agent testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents by registered mail on June 12, 2014. The Landlord provided the Canada Post tracking number as evidence for this method of service which was sent to the Tenant’s forwarding address provided to the Landlord on the move out Condition Inspection Report at the end of the tenancy.

Section 90(c) of the Act provides that a document served by mail is deemed to have been received five days later. A party may not avoid service through a failure or neglect to pick up mail and this cannot form reasons alone for a review of this decision. Therefore, I find that the Tenant was served with documents for this hearing in accordance with the Act and is deemed served on June 17, 2014.

As a result, the hearing continued in the absence of the Tenant and I carefully considered the Landlord’s agent’s undisputed oral and written evidence in this decision.

Issue(s) to be Decided

- Is the landlord entitled to loss of rent for June, 2014?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's claim for lost rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on February 1, 2014 for a fixed term period of one year after which it continued on a month to month basis. The tenancy ended when the Tenant vacated the rental suite on May 29, 2014 at which point rent in the amount of \$725.00 was payable under the written tenancy agreement on the first day of each month.

The Tenant had paid a \$340.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that on May 2, 2014, he personally received a letter from the Tenant informing him that she would be ending the tenancy at the end of May, 2014 because of the bed bug issue. A copy of this letter was provided in written evidence. The Tenant vacated the rental suite on May 29, 2014 and provided the Landlord with a forwarding address which was recorded on the move out Condition Inspection Report.

The Landlord's agent testified that they had made considerable efforts to treat the bed bug issue but now claims for June, 2014 rent because the Tenant's did not provide sufficient time to end the tenancy and for them to re-rent the suite for the June, 2014 period.

Analysis

Section 45(1) of the Act requires that a Tenant must provide at least one full rental month of notice before ending a month to month tenancy. Based on the oral and written evidence of the Landlord, I find that the Tenant failed to provide sufficient time to end the tenancy in accordance with the Act.

Policy Guideline 3 to the Act provides that in these cases, the Landlord would be entitled to sufficient compensation equating to the earliest time the Tenant could have legally ended the tenancy. Therefore, if the Landlord was provided notice to end the tenancy on May 3, 2014, the earliest she could have vacated the rental unit would have been at the end of June, 2014.

The Tenant did not provide sufficient evidence to indicate that she had authority under the Section 45(3) of the Act to end the tenancy earlier. Therefore, I find that the Landlord is entitled to lost rent for June, 2014 in the amount of **\$735.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is \$785.00.

As the Landlord already holds the Tenant's security deposit of \$340.00, and no interest is payable on this amount, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the balance of **\$445.00**.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of \$445.00. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment.

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: October 15, 2014

Residential Tenancy Branch

