



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 FF, MNDC, MNSD

Introduction

This is an amended application for a monetary order for \$139.00 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Issue(s) to be Decided

The issue is whether or not the landlords have established a monetary claim against the respondent's, and if so in what amount.

Background and Evidence

The landlord's testified that:

- On August 26, 2014 the tenant signed a fixture tenancy agreement with an expiry date of August 31, 2015, and a monthly rent of \$925.00.
- An addendum to the tenancy agreement gave the tenants of \$39.00 monthly rental concession for having signed a one-year lease. This addendum also stated that the \$39.00 monthly concession must be paid back to the landlord if the tenancy was ended prior to the end of the one-year lease.
- Rent for the month of September 2014 was paid for September 2014 rent minus the \$39.00 rental concession for total of \$886.00.
- The tenants subsequently breached that tenancy agreement and return the keys to the rental unit on September 2, 2014.
- They attempted to re-rent the unit, but on such short notice they were unable to find the tenant for the unit until October 1, 2014.

- There was also a clause in the tenancy agreement in which the tenants agreed to pay \$350.00 to cover the cost of re-renting the unit if they moved prior to the end of the one-year lease; however since they were able to re-rent it fairly quickly they have reduced the amount requested to \$100.00.

Therefore the total reduced claim that the landlords are requesting is as follows:

Re-renting costs	\$100.00
Payment of monthly concession	\$39.00
Filing fee	\$50.00
Total	\$189.00

The landlord's further request that they be allowed to keep \$189.00 of the security deposit in satisfaction of this claim.

The tenants testified that:

- On August 24, 2014 the landlord verbally agreed to rent them a ground-floor unit at the rental property.
- When they went to the rental property on August 26, 2014 the landlord informed them that a ground-floor unit was no longer available, and therefore they accepted a different unit and signed a fixed term tenancy agreement, and receive the keys to that unit.
- They subsequently determined that the unit was not satisfactory for their needs and therefore on August 28, 2014, not September 2, 2014, they informed the landlord that they would not be taking the unit, and they returned the keys.
- They believe that since the landlord had the keys to the rental unit on August 28, there was still time to re-rent the unit for September 2014, and they believe that their full September 2014 rent should be returned.
- Further, they do not believe that they should be paying any re-renting costs, as the landlord had originally promised them a ground-floor suite and then later told them it was not available.

Analysis

It is my finding that the landlord has shown that the tenants breached a fixture tenancy agreement that was signed on August 26, 2014, and that they were unable to re-rent the unit in the month of September 2014.

It's my decision therefore that the landlords are not required to return the September 2014 rent, and I allow the landlord's claim for the \$100.00 re-renting fee, and the \$39.00 concession. The tenancy agreement that was signed clearly states that there would be a \$350.00 re-renting fee, and that the \$39.00 concession would have to be paid if the lease was broken. Therefore, considering that the landlord has reduced the re-renting fee to \$100.00, I find the landlord's claim extremely reasonable.

I also allow the request for recovery of the \$50.00 filing fee.

The tenants believe that the landlord should have been able to re-rent the unit for the month of September 2014, however, although I do accept the tenants claim that the keys were returned to the landlord on August 28, 2014, I find it very unlikely that the unit would have been able to be re-rented on such short notice, and I except the landlord's testimony that they were unable to re-rent it.

Further, although the tenants claim that they were promised a different unit than the unit they subsequently signed the lease for, I note that the rental application that was signed on August 9, 2014, has the same suite number (332) as the suite they subsequently leased.

Conclusion

I have allowed the applicant's full reduced claim of \$189.00, and I therefore order that the landlord may retain \$189.00 of the tenant security deposit, and I have issued an Order for the remaining \$273.50 to be returned to the tenants.

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: April 15, 2015

Residential Tenancy Branch

