



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

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 19, 2014, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for damages to the unit?
Is the landlord entitled to monetary order for money owed or compensation under the Act?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 1, 2012. Rent in the amount of \$900.00 was payable on the first of each month. The tenants paid a security deposit of \$450.00. The tenancy ended on May 31, 2014.

The landlord claims as follows:

a.	Loss of revenue for June 2014	\$ 900.00
b.	Damage and cleaning charges	\$ 1,050.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 1,100.00

Loss of revenue for June 2014

The landlord's agent testified that the tenants did not give proper notice to end the tenancy. The agent stated on May 3, 2014, the tenants informed them that they were ending the tenancy effective May 31, 2014. Filed in evidence is a copy of the notice to end tenancy which supports the agent's testimony.

The landlord's agent testified that they immediately advertised the rental unit on several popular websites; however, they were unable to find a new renter for any portion of June 2015. The landlord seeks to recover loss of revenue for the June 2014, in the amount of \$900.00.

Damage and cleaning charges

The landlord's agent testified that the tenant caused damage to the kitchen light fixture, and the blinds were missing at the end of the tenancy. The agent stated that there was also a heat light that was burnt out at the end of the tenancy which needed to be replaced. The agent stated that the tenant also left garbage behind which had to be removed. The agent stated that the tenant signed the cost analysis sheet agreeing to the amount of \$150.00 to cover the damages and cleaning cost.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of revenue for June 2014

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

...

In this case, the evidence of the landlord's agent was the tenants did not give notice until May 3, 2014 to end the tenancy on May 31, 2014. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was June 30, 2014.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord's agent was that they immediately advertised the rental unit on several popular website and were unable to find a new renter for any portion of June 2014, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for June 2014, in the amount of **\$900.00**.

Damage and cleaning charges

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although I note the tenant signed the cost analysis document, it does not indicate whether or not the tenant agreed or disagreed that the report fairly represented the premises. However, I accept the undisputed testimony of the landlord's agent that the tenant caused damage to the broken light fixture, missing blinds, and failed to remove garbage. I find the tenant breached the Act, when they failed to leave the rental unit reasonable clean and undamaged. I find the amounts claimed by the landlord reasonable. Therefore, I find the landlord is entitled to compensation for damages and cleaning in the amount of **\$150.00**.

I find that the landlord has established a total monetary claim of **\$1,100.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$650.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: July 07, 2015

Residential Tenancy Branch

