



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 MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for loss as a result of this tenancy pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:44 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. He testified that the tenants had both been served with individual copies of the landlord's Application for Dispute Resolution by registered mail on February 13, 2015. The landlord provided Canada Post receipts and tracking numbers with respect to these mailings. Given this evidence and pursuant to section 89 and 90 of the Act, I find the tenants both deemed served with the landlord's Application for Dispute Resolution and supporting materials on February 18, 2015, 5 days after their registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2014 with a rental amount of \$900.00 payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement providing the details of the agreement. The agreement indicated

a rental period of “not less than 6 months”. The landlord testified that the tenants vacated the rental unit on January 31, 2015 after providing notice to the landlords on December 27, 2014. The landlord submitted a copy of the tenants’ notice to end tenancy. The landlord testified that he continues to hold a \$450.00 security deposit paid by the tenants at the outset of this tenancy. The landlord sought to retain a portion of this security deposit towards \$350.00 “lease break fee” and \$50.00 to recover the filing fee for this application.

The landlord submitted a copy of the condition inspection report from move-in and move-out as well as a “move in/move out/charge analysis” sheet. He testified that all of these documents were provided to the tenant at the end of the tenancy. The condition inspection reports are signed by both tenants. They do not indicate any deductions as a result of damage to the rental unit. A “move-out report” was also submitted by the landlord. It provides the basic details of the tenancy, including start and end date of the tenancy as well as the unit number, names of tenants and security deposit amount. The report also states, “lease breaking fee” with an amount of \$350.00. At the bottom of that document, the report states that the “total charges” are \$350.00.

The landlord testified that the tenants were made aware of the \$350.00 charge at the end of their tenancy. He submitted that both tenants signed the residential tenancy agreement and were reminded of clause 4 of the agreement at move-out. Clause 4 reads,

The tenancy created by this agreement commences on October 1, 2014 and continues on ... not less than 6 months...basis in accordance with the Act. However, if the Tenant terminates the tenancy in less than 6 months, \$350.00 + rent concessions 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 landlord testified that the unit was re-rented for February 15, 2015. He testified that efforts were made to re-rent by advertising in a variety of manners as well as showing the suite on several occasions, interviewing at least two persons and completing all the move-out and move-in/transfer of tenancy paperwork. He submits that the fee for terminating the tenancy prior to the completion of a 6 month tenancy term is reasonable given the costs incurred by the landlord to re-rent the unit.

Analysis

Section 44 of the *Residential Tenancy Act* sets out how tenancies end:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (ii) section 46 [landlord's notice: non-payment of rent];

- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(emphasis added)

Section 45(2) deals with a tenant's notice in the case of a fixed term tenancy:

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(emphasis added)

The tenancy agreement submitted by the landlord as evidence and signed by the tenants provides a clear indication that the tenant agreed to a minimum six month term with a "lease break fee" if that term was not met. The residential tenancy agreement submitted by the landlord also shows that the tenant agreed to a charge of \$350.00 if the tenancy terminated before the expiry of the 6 month term. As the tenants did not choose to attend this hearing, there is no evidence that disputes the landlord's sworn testimony.

The landlord also provided sworn and undisputed testimony (as well as supporting documentary evidence) to prove that the landlord incurred costs related to the early end to this tenancy. He provided testimony that the landlord spent time and money in advertising to re-rent, interviewing prospective tenants and other administrative costs related to a new tenancy.

Given the undisputed testimony of the landlord and the supporting evidence submitted, I find the landlord is entitled to \$350.00 from the tenants for failing to meet the terms of the fixed term tenancy agreement. I note that the landlord has testified that he continues to hold a \$450.00 security deposit paid by the tenants. The landlord is authorized to retain \$350.00 of the tenants' security deposit towards this amount. As the landlord was successful in his application, he is entitled to a further \$50.00 to recover the filing fee for this application.

Conclusion

The landlord is entitled to a total monetary amount of \$400.00 to recover the filing fee for this application and to recover the cost of an early end to a fixed term tenancy.

The landlord is ordered to retain \$400.00 of the tenants' \$450.00 security deposit leaving a remaining security deposit amount of \$50.00 to be addressed in accordance with the *Act*.

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 25, 2015

Residential Tenancy Branch

