



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 money owed, for damages to the unit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

Procedural matters

Although the landlord served the co-tenant JC by registered mail, the tenant JC was not named as a respondent in the landlord's application. Therefore, this hearing proceeded with only the named respondent.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2014. Rent in the amount of \$900.00 was payable on the first of each month. The tenant paid a security deposit of \$450.00. The tenancy ended on March 31, 2015.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Cleaning	\$ 345.00
b.	Missing key	\$ 10.00
c.	Furniture disposal	\$ 50.00
d.	Late rent fee for March	\$ 25.00
e.	Loss of rent for April	\$ 900.00
f.	Filing fee	\$ 50.00
	Total claimed	\$1,380.00

At the outset of the hearing the tenant indicated that they agree to the costs for cleaning, missing key, furniture disposal and late fee for March 2015 in the total amount of \$430.00.

The landlord's agent testified that the tenant did not give sufficient notice to end the tenancy. The landlord stated that they received the notice on March 2, 2015 to the tenancy on April 1, 2015.

The landlord's agent testified that the rental unit was immediately advertised and they showed the rental unit to about 10 potential renters. However, they were unable to find a new renter until May 1, 2015 and as an incentive to the new renter they allowed the new renter to take possession of the unit on April 27, 2015.

The tenant testified that they think there were about 20 showing of the rental property. The tenant stated that they believed the landlord had a new renter for April 1, 2015, as a potential renter told them that they were going to enter into an agreement with the landlord.

The landlord's agent argued that there was a potential renter, however, they refused to provide any of the required documents with their application and as a result their application was not considered.

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, the 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-comply landlord or tenant must compensate the other for damage or loss that results.

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.

At the outset of the hearing the tenant agreed to the cost for cleaning, missing key, furniture disposal and late fee for March 2015. Therefore I find the landlord is entitled to recover the amount of **\$430.00**.

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 tenant did not give notice until March 2, 2015 to end the tenancy on April 1, 2015. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was April 30, 2015.

Since the tenant 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.

In this case, the evidence of the landlord agent was that they immediately advertised the rental unit and had approximately 10 showing to potential renter. A new renter was found and their tenancy agreement commenced on May 1, 2015, however, the new renter was allowed to move in to the rental unit on April 27, 2015. I find the landlord made reasonable efforts to minimize the loss.

However, I find the landlord is entitled to recover loss of rent from April 1 to April 26, 2015, based on prorated amount of \$30.00 per day, as it was their choice to allow the new renters to move in early without paying rent. Therefore, I find the landlord is entitled to recover prorated rent for April 2015, the amount of **\$780.00**.

I find that the landlord has established a total monetary claim of **\$1,260.00** 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 **\$810.00**.

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: September 16, 2015

Residential Tenancy Branch

