



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on June 24, 2015. The Landlord filed seeking to obtain a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord submitted documentary evidence that each Tenant was served notice of this application and this hearing by registered mail on June 26, 2015.

The Landlord submitted documentary evidence of the Canada Post tracking website which indicated each registered mail package were signed received on July 6, 2015. Based on the undisputed evidence of the Landlord, I find that the Tenants were each served notice of this hearing in accordance with Section 89(1) (c) of the Act. I continued in absence of the Tenants and proceeded to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

Has the Landlord met the burden to prove entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a written fixed term tenancy agreement that began on October 1, 2013 and was scheduled to end on September 30, 2014. Rent of \$1,350.00 was due on or before the first of each month and on September 20, 2013 the Tenants paid \$675.00 as the security deposit and \$50.00 as the key deposit. A move in condition inspection report form was completed on October 12, 2013 in the presence of both parties.

On May 8, 2014 the Tenants served the Landlord written notice of their intent to end their tenancy early effective June 30, 2014.

On May 8, 2014 the Tenants initialled and signed an early termination document acknowledging their requirement to pay the Landlord \$300.00 liquidated damages as provided for in section 5 of the tenancy agreement.

The Tenants vacated the property by May 31, 2014. The move out condition inspection report form was completed on May 31, 2014 in the presence of both parties and one of the Tenants signed a separate document agreeing to a \$509.45 deduction from their security deposit comprised of the following: \$113.00 for carpet cleaning; \$101.20 for drape cleaning; \$300.00 for liquidated damages; less a credit of \$4.75 for the returned laundry card.

The Landlord testified that the Tenants' June 2014 rent cheque of \$1,350.00 was returned because the Tenants' bank account had been closed. The Landlord argued that they were not able to re-rent the unit until July 14, 2014. Therefore, they are seeking the \$1,350.00 unpaid rent for June 2014 plus \$662.50 for loss of rent for July 2014. In addition, the Landlord sought to recover the \$25.00 returned cheque fee as provided for in section 10 of the tenancy agreement.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and 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.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case the tenancy agreement stipulated that the end of the fixed term was September 30, 2014. The Tenants gave notice to end their tenancy effective June 30, 2014, in breach of section 45(2) of the *Act*. The Tenants vacated the rental unit by May 31, 2014 and failed to ensure their June 2014 rent was paid. I accept the Landlord's submission that they were unable to re-rent the unit until July 14, 2014.

Based on the above, I find the Landlord met the burden of proof to support their claim. Accordingly, I grant monetary compensation of \$1,350.00 for the unpaid June 2014 rent plus \$662.50 loss of rent for July 2014 for a total amount of **\$2,012.50**, pursuant to section 67 of the *Act*.

The tenancy agreement provided for liquidated damages of \$300.00 at section 5. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept the undisputed evidence that the Tenants left the rental unit requiring cleaning and they signed agreeing to \$509.45 to be deducted from their security deposit for cleaning and liquidated damages. Accordingly, I grant the Landlord's claim in the amount of **\$509.45**, pursuant to section 67 of the *Act*.

- 7(2) 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 7 of the Regulations provides that a landlord may charge a tenant a non-refundable fee of \$25.00 for a returned cheque providing that the tenancy agreement provides for such a fee.

In this case section 10 of the tenancy agreement provided that the Landlord may charge a returned cheque fee. I accept the undisputed evidence that the Tenants' June 2014 rent was returned and I grant the Landlord's claim in the amount of **\$25.00**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order – I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent and loss of rent	\$2,012.50
Cleaning & Liquidated Damages	509.45
Returned Cheque	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,596.95
LESS: Key Deposit	-50.00
LESS: Security Deposit \$675.00 + Interest 0.00	<u>-675.00</u>
Offset amount due to the Landlord	<u>\$1,871.95</u>

Conclusion

The Landlord was successful with their application and was awarded monetary compensation in the amount of \$2,596.95. The monetary award was offset against the security and key deposit leaving a balance owed to the Landlord of \$1,871.95.

The Landlord has been issued a Monetary Order in the amount of **\$1,871.95**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: December 08, 2015

Residential Tenancy Branch

