



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP & TANYA PATTERSON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 13, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represent.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on February 1, 2015 as a fixed term tenancy for 12 months. Rent was \$1,125.00 with a \$94.00 reduction as an incentive if the tenancy agreement was adhered too. The tenancy incentive agreement says if the tenancy agreement is broken before the end of the fixed term the incentive is lost for all the months included in the tenancy agreement. The Tenant paid a security deposit of \$562.50 and a pet deposit of \$200.00 at the start of the tenancy. The Landlord said the on May 30, 2015 the Tenants gave notice they were ending the tenancy and they would be moving out of the rental unit on June 30, 2015. The Landlord said a move in condition inspection was

completed and signed on January 16, 2015 and a move out inspection was completed on June 16, 2015 but it was not signed.

The Landlord said that the Tenants did not pay \$1,056.00 of rent for June, 2015. The Landlord said she issued a 10 Day Notice to End Tenancy dated June 4, 2015, which is in the Landlord's hearing package. As well the Landlord said because the Tenants broke the lease by giving notice to end the tenancy before the end of the fixed term and by not paying the June, 2015 rent the Landlord is requesting the service charge for the costs of renting the unit to new tenants in the amount of \$350.00. The Landlord said this is a clause in the tenancy agreement that the Tenants agreed to. As well the Landlord requested the recovery of the rent incentive of \$94.00 for 5 months in the amount of \$470.00. The Landlord said the agreement for the incident was broken when the Tenants moved out and the Landlord is requesting to recover the rent incentives as per the agreement. In addition the Landlord said were cleaning costs incurred by the Landlord in the amount of \$175.00. The Landlord submitted photographs of the unit at move out which show the unit to be dirty and the blinds broken. The Landlord requested \$175.00 for clean and to replace the blinds. The Landlord said her total claim is for \$2,051.00 plus the \$50.00 filing fee.

The Tenant said they had issues from the start of the tenancy. The Landlord was told of problems with the rental unit including a clogged toilet and the Landlord did nothing to fix it. The Tenant said the Landlord told him to pay for the plumber to fix the toilet. As well the Tenant said the Landlord moved him and his family from one unit to another in the rental complex because of complaints about noise his children were making. The Tenant said the regional manager for the Landlord did not like him or his family and she treated him and his family unfairly.

In addition the Tenant said his wife has a serious health issue and the stress of the rental complex and the Landlord may it impossible for them to continue the tenancy. As a result they gave their notice to move out May 30, 2015 and then when the Tenants received a 10 Day Notice to End Tenancy for unpaid rent they moved out on June 16, 2015. The Tenant said that because they were evicted the Landlord broke the tenancy agreement and therefore the Landlord's application should be dismissed.

The Tenant said in closing that the tenancy was an impossible situation for them and the Landlord did not repair or fix any of the complaints that the Tenants made during the tenancy. The Tenant said he thinks the Landlords claims are not valid as the Landlord evicted them and therefore the Tenants did not break the tenancy agreement.

The Landlord said the Tenants gave notice on May 30, 2015 that they were moving out on June 30, 2015 which broke the tenancy agreement. The Landlord said the service fee of \$350.00 and the recovery of the rent incentive of \$470.00 are both valid because the Tenants gave notice to end the tenancy before the end of the fixed term.

Further the Landlord said the Tenants agree they did not pay the June, 2015 rent and the unit was left unclean as the photographs show. The Landlord said they are just trying to recover costs that resulted from this tenancy.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term **tenancy not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$1,056.00 for June, 2015. I award the Landlord \$1,056.00 in unpaid rent.

Further the tenancy agreement and rental incentive agreement were both agreed to and signed by the Tenants and the Landlord; therefore I find for the Landlord and I order the agreements to be enforced. I award the Landlord \$350.00 for the service fee and costs associated with re-renting the unit and I order the Tenant to reimburse the Landlord \$470.00 as recovery of the rent incentive.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has not provided receipts for her claims to clean the unit and to replace the blinds therefore the Landlord has not proven a loss and the Landlord has not verified the loss. Consequently I dismiss the Landlord's claim for \$175.00 for cleaning and replacement of the blinds in the unit

As the Landlord has been partially successful in this matter, she is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,056.00
	Service fee	\$ 350.00
	Recover rent incentive	\$ 470.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,926.00
Less:	Security Deposit	\$ 562.50
	Pet Deposit	\$ 200.00
	Subtotal:	\$ 762.50
	Balance Owing	\$ 1,163.50

Conclusion

A Monetary Order in the amount of \$1,163.50 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 22, 2015

Residential Tenancy Branch

