



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 MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

An agent for the company Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 20 minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address on July 22, 2015; this address was provided by the Tenant in a note handed to the Landlord on July 7, 2015 after the tenancy had ended. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the Landlord’s Application on July 27, 2015 pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and loss of rent?
- Is the Landlord entitled to the for damage and cleaning to the rental unit?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on December 10, 2013 and was for a fixed term of one year which continued on a month to month basis thereafter. Rent under the written tenancy agreement was payable by the Tenant in the amount of \$900.00 on the first day of each month. However, the Tenant signed a rental incentive agreement which required the Tenant to pay rent in the amount of \$863.00 for the first year of the fixed term tenancy; the rent then reverted back to the agreed amount of \$900.00. The Tenant paid a security deposit in the amount of \$450.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that on June 6, 2015 the Tenant approached her and verbally informed her that she would be vacating the rental unit at the end of the month. The Landlord testified that the Tenant provided no written notice to end the tenancy but vacated the rental unit on July 1, 2015.

The Landlord testified the Tenant was in rental arrears in the amount of **\$148.00** as supported by the Tenant's ledger of rent payments. This shows the Tenant failed to pay the total amount of rent for the months of February, March and April 2015. As a result, the Landlord seeks to recover this unpaid rent from the Tenant. In addition, the Landlord also seeks to recover the loss of rent for July 2015 (**\$900.00**) because the Landlord was unable to re-rent the unit due to the Tenant's lack of written notice to end the tenancy.

The Landlord also claims **\$265.00** for damages and lack of cleaning to the rental unit. The Landlord testified that at the start of the tenancy she completed a move-in Condition Inspection Report (the "CIR"). The Landlord then completed a move-out CIR on July 2, 2015 with the Tenant.

The Landlord testified that the Tenant had failed to clean the rental unit and provided photographs showing a dirty oven and fridge which was on rollers, children's stickers on the fridge, and a dirty ceiling fan. In addition, the Tenant had caused damage to the blinds in the rental unit as well as missing light bulbs. The Landlord provided photographic evidence of these damages as well as an in-house invoice which documents the cost of the cleaning and damages being claimed.

Analysis

The Landlord made an Application to keep the Tenant's security deposit. Section 38(1) of the Act requires a landlord to make an Application to keep a tenant's security deposit within 15 days of the tenancy ending and the landlord being provided with a forwarding

address. I accept the Landlord's oral evidence that the tenancy ended on July 1, 2015. I also accept the Landlord's evidence that the Tenant provided a forwarding address on a note which was handed to the Landlord on July 7, 2015. The Landlord made the Application on July 13, 2015. Therefore, I find the Landlord complied with the 15 day time limit stipulated by the Act to make a claim against the Tenant's security deposit.

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement. Based on the undisputed evidence before me, I accept the Tenant failed to pay rent in the amount of **\$148.00** during the tenancy.

Section 45(1) of the Act explains a tenant's obligations when ending a month to month tenancy. The Act states that a tenant must give the Landlord a notice of at least one full rental month before ending the tenancy and this must be done in writing as required by Section 52 of the Act. Proper written notice is required to enable a landlord to re-rent the unit for the following month.

Based on the foregoing, I find there is no evidence before me the Tenant provided proper written notice to end the tenancy. Therefore, the Tenant is liable for the loss of rent as this would not have given sufficient time for the Landlord to re-rent the unit for July 2015. As a result, the Landlord is granted **\$900.00** in lost rent.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenant provided no evidence prior to the hearing to dispute the CIR or the Landlord's evidence. Therefore, I rely on the undisputed testimony of the Landlord, the photographic evidence, and the move out CIR to make findings on the Landlord's claim for damages and lack of cleaning to the rental unit.

I find that on the balance of probabilities the Tenant failed to clean the fridge, the stove, and the ceiling extractor fan; especially as the fridge and stove were on rollers. I also find the Tenant failed to replace light bulbs at the end of the tenancy and damaged window blinds. I accept the Landlord's in-house receipt which verifies the costs being claimed from the Tenant. Therefore, I grant the Landlord these costs in the amount of **\$265.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to

Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,363.00** (\$148.00 + \$900.00 + \$265.00 + \$50.00).

As the Landlord already holds \$450.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$913.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant breached the Act by not ending the tenancy properly and failing to clean and rectify damages in the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance of **\$913.00**.

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: January 04, 2016

Residential Tenancy Branch

