



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: MNR MNSD MNDC FF

Introduction

This hearing was convened in response to an application by the landlord, filed February 09, 2016 for a Monetary Order to recover the landlord's legal costs, purported bailiff's costs and unpaid rent. The landlord further seeks to retain the security deposit. The application is inclusive of recovery of the filing fee associated with this application.

Both parties attended the hearing and were given opportunity to discuss their dispute, settle their dispute, and present all relevant evidence and testimony in respect to the claim and to make relevant prior submissions of evidence to the hearing and fully participate in the conference call hearing. The tenant did not submit document evidence and acknowledged receiving the evidence of the landlord. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

The burden of proof rests with the applicant (landlord) to prove their claims.

Background and Evidence

The undisputed facts in this matter agreed by the parties are as follows.

1. The tenancy was Ordered at an end August 31, 2015 by an Arbitrator's Decision and Order dated July 29, 2015.
2. The tenant applied for Judicial Review and a stay of the Order of Possession in Supreme Court on August 28, 2016, before the Order became effective.

3. The tenant was represented by legal counsel and the landlord determined to engage the services of a lawyer to represent them.

4. The two lawyers brokered a settlement between the tenant and landlord ending the Supreme Court action and agreement for the tenant to occupy the rental unit under a licence to occupy for *use and occupancy* only of the rental unit, and not pursuant to a continuing tenancy or reinstatement of the agreement. The settlement agreement further required the tenant to pay the landlord *occupation rent* in the equivalent amount of the rent for the unit until the end of November 2015. The agreement stated the landlord was then at liberty to enforce the Order of Possession December 01, 2015.

5. On December 02, 2015 the landlord determined to engage the services of a *residential mediation service (VES)* rather than pursue enforcement of the Order of Possession via Supreme Court with a view to a court appointed bailiff to end the tenant's occupancy. The *residential mediation service (VES)* brokered another settlement with the landlord's head office allowing the tenant more time to vacate the unit January 31, 2016.

6. The parties agree that the tenant did not remove all of their items in the unit until February 04, 2016.

7. The parties agree the landlord still holds the security deposit in the amount of \$450.00 and a refundable laundry card fee of \$10.00.

8. The landlord seeks pro-rated *occupation rent* for February 2016 in the amount of \$127.60 (February 1-4, 2016), plus \$25.00 late rent fee. The landlord further seeks the tenant compensate them for the cost of their lawyer's representation of the landlord in 2015 in the amount of \$1818.72, as well as their cost for the *residential mediation service (VES)* engaged by the landlord on December 02, 2015, in the amount of \$995.00.

The tenant disputes the landlord's claims and requests return of the security deposit.

Analysis

Based on preponderance of all the document and testimonial evidence I have reached a Decision.

Section 7 of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 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.
- 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.

The landlord has not proven the tenant contravened the Act which in turn created a loss for the landlord, for which the tenant should now be responsible. Effectively, the landlord chose to make certain expenditures related to their legal representation and then chose to engage a mediation service, rather than having the Order of Possession enforced after December 01, 2015. The tenant is not responsible for these arbitrary choices by the landlord. As a result, I find the landlord has not presented a claim for costs which are compensable under the Act. As a result, I **dismiss** these portions of their claim.

It must be noted that the tenant occupied the rental unit to February 04, 2016 pursuant to a license for *use and occupancy only* whilst paying the landlord *occupation rent*, rather than rent under a tenancy agreement. The landlord did not have a tenancy agreement with the tenant between September 01, 2015 and February 04, 2016. Therefore the landlord cannot claim the tenant owes a *late rent fee* as would be found under a tenancy agreement. As a result, this portion of the landlord's claim is **dismissed**.

On reflection, I accept that the tenant owed the landlord *occupation rent* during their occupancy of the unit. The parties agree the tenant over held the unit for 4 days in February 2016, for which the tenant owes the landlord pro-rated occupation rent in the claimed amount of **\$127.60**: and I grant the landlord this amount. As the landlord was largely unsuccessful in their application I grant the landlord half of their filing fee in the amount of \$50.00.

In addition, **Residential Tenancy Policy #17 - Security Deposit and Set Off**, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION (emphasis mine)

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will Order the return of the deposit or balance of the deposit, as applicable, **whether or not the tenant has applied for arbitration for its return.**

I find it is appropriate that I return any uncalculated portion of the tenant's security deposit to the tenant. In addition I find it appropriate to return to the tenant the refundable laundry card fee held by the landlord. Therefore, *calculation for Monetary Order* is as follows. The security deposit will be off-set from the award made herein.

Landlord's award for over holding <i>occupation rent</i> February 2016	\$127.60
Filing fee to landlord for cost of this application	\$50.00
<i>Minus tenant's deposit of \$450.00 and Refundable Laundry Card fee (no interest)</i>	<i>-\$450.00 -10.00</i>
<i>Total Monetary of Order to tenant</i>	<i>(\$282.40)</i>

Conclusion

I Order that the landlord may retain \$177.60 of the tenant's security deposit of \$450.00 in full satisfaction of their claim and I grant the tenant an Order under Section 67 of the Act for the balance of the security deposit and laundry card fee in the amount of **\$282.40**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order is final and binding on both parties.

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: July 06, 2016

Residential Tenancy Branch

