



Dispute Resolution Services

Page: 1

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, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail for each of the two tenants on November 12, 2015. The tenants both confirmed receipt of the landlord's notice of hearing package in this manner. I accept the undisputed affirmed evidence of both parties and find that the tenants were both properly served with the notice of hearing package on November 12, 2015 as per section 88 of the Act. The tenants are deemed to have received the notice of hearing package 5 days later as per section 90 of the Act.

During the hearing it was agreed upon by all parties that the tenants had received the landlord's submitted documentary evidence via Canada Post Registered Mail. The tenants did not submit any documentary evidence. Neither party made any further arguments or submission regarding the landlord's documentary evidence. As such, I find that both parties were sufficiently served as per section 89 of the Act.

At the end of the hearing the tenants expressed an interest to try and mediate a resolution to the dispute. Both parties were provided an opportunity to resolve the

dispute through mediation. The landlord denied the tenants' request to reach a mediated resolution. The hearing ended through the arbitration.

Preliminary Issue

During the hearing the landlord withdrew one of the two portions of the monetary claim of:

\$90.00 Broken Patio Track

As such, no further action is required for this portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 15, 2015 on a fixed term tenancy of 6 months and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 15, 2015. The monthly rent was \$825.00. A security deposit of \$412.50 and a pet damage deposit of \$200.00 were paid on June 15, 2015.

The landlord seeks a monetary claim of \$350.00 for recovery of a lease break fee. The landlord provided affirmed testimony the tenants prematurely ended the tenancy on November 30, 2015 and were subject to the section 4 of the signed tenancy agreement, a lease break fee.

The tenant, E.W. provided affirmed testimony confirming that the signed tenancy was for a 6 month fixed term which would later become a month-to-month tenancy. The tenants both confirmed that notice to end the tenancy was given to the landlord in October 2015 to end the tenancy on November 30, 2015. The tenant, E.W. stated that they had moved out on November 15, 2015. Both parties confirmed that possession of the rental unit was returned to the landlord on November 30, 2015. The tenant, E.W. provided affirmed testimony that both tenants were not contesting the \$350.00 lease

break fee as they had prematurely ended the tenancy on November 30, 2015 prior to December 30, 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants prematurely ended the 6 month fixed term tenancy prior to December 30, 2015.

Both parties confirmed that a lease break fee of \$350.00 was agreed to in section 4 of the signed tenancy agreement. Both parties provided undisputed affirmed testimony that the tenants prematurely ended the tenancy on November 30, 2015. The tenants also confirmed that they were not disputing the landlord's monetary request for compensation for prematurely ending the tenancy. On this basis, I find that the landlord is successful in his application for dispute and is entitled to recovery of \$350.00 in compensation.

As the landlord was substantially successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord applied to keep the tenant's \$412.50 security and \$200.00 pet damage deposits. I allow the landlord to retain \$400.00 of the original security deposit in satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I make an order in the tenant's favour in the amount of \$212.50 under the following terms:

Item	Amount
Compensation- Lease Break Fee	\$350.00
Recovery of filing Fee	50.00
Offset Security/Pet Damage Deposits	-612.50
Total Monetary Order	(\$212.50)

The tenants are provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: July 07, 2016

Residential Tenancy Branch