



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 MNDC MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on December 16, 2015. The Landlord filed seeking a Monetary Order for: unpaid rent; damages to the unit, site or property; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security and pet deposits; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). No one was in attendance at the hearing on behalf of the Tenants. The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail December 21, 2015. Canada Post tracking receipts were submitted in the Landlords' documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed submissions of the Landlord I find each Tenant was served notice of this proceeding on December 26, 2015, five days after they were mailed, pursuant to section 90 of the *Act*. As such, I continued the hearing in absence of the Tenants.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a fixed term written tenancy agreement that began on November 1, 2014 and switched to a month to month tenancy agreement after October 31, 2015. Rent of \$900.00 was payable on or before the first of each month. On October 15, 2014 the Tenants paid \$450.00 as the security deposit plus \$200.00 as the pet deposit. A move in condition inspection report was completed on October 25, 2015 and the move out report was completed on December

1, 2015. The Tenants provided their forwarding address to the Landlord during the move out inspection.

On December 1, 2015 the Landlord received a written notice to end tenancy from the Tenants. The Tenants ended the tenancy December 2, 2015 when they vacated the unit and returned possession to the Landlord.

The Landlord now seeks \$1,345.00 monetary compensation which is comprised of: \$125 accumulated NSF and late payment charges as provided for by the tenancy agreement; \$113 rent owed for November 2015; \$58.06 rent owed for the two days in December 2015 the Tenants had possession of the unit; \$841.94 for loss of December 2015 rent as the unit was not re-rented until January 1, 2016; \$25 late payment fee for December 2015; \$67 cleaning costs; \$100.00 missing key FOB; and \$15.00 content insurance fee.

The Landlords submitted evidence that the Tenants had a \$2.02 overpayment on their account at move-in and they received a payment of \$405.00 on November 26, 2015 which was applied to the Tenants account and deducted off the amounts claimed above, leaving a balance for their claim amount of \$937.98.

The tenancy agreement section 28 stipulated the Tenants were required to have tenant content insurance. The Landlord and Tenant entered into a separate contract for content insurance on November 1, 2015 which required the Tenants to pay \$15 for that insurance.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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.
- 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 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

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Section 7 of the Regulations stipulates that a landlord may charge a tenant a non-refundable fee for late payments providing that the tenancy agreement provides for that fee. The tenancy agreement provided for \$25.00 late payment fees in accordance with section 7 of the Regulations.

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 45 (1) of the Act stipulates that a tenant may end a periodic 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, 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.

I accept the Landlords' undisputed evidence that the Tenants ended the tenancy without proper notice; they left the rental unit requiring additional cleaning; they had arrears for late payment charges; they did not return the key FOB; and they did not pay rent for December 2015. Accordingly, I grant the Landlord's claim of \$1,330.00 - \$2.02 - \$405.00 = **\$922.98**, pursuant to section 67 of the *Act*.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. While I agree the tenancy agreement stipulates the Tenants must have content insurance that insurance was not provided for in the payment of rent. Rather, the Landlord and Tenants entered into a separate contract for service for content insurance which is not covered under the *Act*. Accordingly, I declined to consider the claim of \$15.00 content insurance, for want of jurisdiction.

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

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$450.00 security deposit or the \$200.00 pet deposit since October 31, 2015.

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

Monetary award	\$ 922.98
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 972.98
LESS: Pet Deposit \$200.00 + Interest \$0.00	<u>-200.00</u>
LESS: Security Deposit \$450.00 + Interest \$0.00	<u>-450.00</u>
Offset amount due to the Landlords	<u>\$ 322.98</u>

The Tenants are hereby ordered to pay the Landlord the offset amount of \$322.98, forthwith.

In the event the Tenants do not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$322.98** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$972.98 which was offset against the Tenants' security and pet deposits leaving a balance owed to the Landlord of **\$322.98**.

This decision is final, legally binding, and 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 21, 2016

Residential Tenancy Branch