



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 MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on October 1, 2015 and ended on March 15, 2016. Rent of \$925.00 was payable on the first day of each month. The Tenant was given a rent concession of \$77.00 per month for entering into a fixed term tenancy. The Tenant is required to repay the concession amount and to pay a "lease break fee" of \$350.00 if the tenancy is ended before the fixed term end date. The Landlord collected a security deposit of \$250.00. The Tenant left because she claimed mice were present however the Landlord was not given opportunity to inspect and repair. The full rent was paid for March 2015 and the unit was re-rented at the same rental rate for April 1, 2016. The Tenant provided its forwarding address in writing at the move-out inspection. The Landlord claims \$462.00 and \$350.00 for the Tenant ending the tenancy agreement before the end term.

Both a move-in and move-out inspection and report was completed. The Landlord marked the blinds as damaged and the Tenant disagreed with this damage. The Landlord provided faxed

photos apparently depicting the damage to the blinds however it is noted that the photos do not provide any clear images of any damage. The Landlord provides new blinds for each tenancy. The Landlord claims \$230.00 for the costs of the blinds.

The Landlord claims the \$100.00 paid as a filing fee.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the lack of photo evidence of damage to the blinds, the evidence that blinds are provided for each tenancy and considering the evidence that the Tenant disputed any damage to the blinds, I find that the Landlord has not substantiated that the Tenant damaged the blinds or that any action of the Tenant caused the blinds to be replaced and I dismiss this claim.

The Landlord's claim for the "lease break fee" is essentially a claim for liquidated damages: an amount predetermined as the damages that would flow from a breach of a fixed term tenancy. As the repayment of the "concession" flows from an early end of tenancy, as the damages arising from an early end of tenancy have already been determined by agreement at \$350.00, and as the Landlord has made a conflicting claim for both the lease break fee and the concession amount, I resolve the conflict in favour of the Tenant and find that the Landlord has only substantiated the lesser amount of **\$350.00** for the lease break fee. I dismiss the Landlord's claim for recovery of the concession amount.

As the Landlord's application has met with minimal success I find that the Landlord is only entitled to half the filing fee of **\$50.00** for a total entitlement of **\$400.00**. Deducting the security deposit of **\$250.00** plus zero interest leaves **\$150.00** owed by the Tenant to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$150.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: August 17, 2016

Residential Tenancy Branch