



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, MND, MNDC, MNSD, FF

Introduction

This hearing convened as a result of an Application for Dispute Resolution filed by the Landlord on January 11, 2016 wherein they sought the following relief:

- a Monetary Order for:
 - unpaid rent;
 - loss of rent;
 - compensation under the *Act* and the tenancy agreement; and,
 - for damage to and cleaning of the rental unit,
- authority to retain the Tenants' security and pet damage deposit in partial satisfaction of the claim; and,
- to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was represented by M.T., the resident manager. The hearing process was explained and the participants were asked if they had any questions. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen to the Tenants' security and pet damage deposits?

3. Is the Landlord entitled to recover the filing fee paid for their application?

Background and Evidence

This 1 year fixed term tenancy began February 1, 2015. The Tenants paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$200.00.

Documentary evidence shows that the Tenants were offered, and accepted a rental incentive such that their rent was reduced by \$100.00 per month provided that they fulfilled the one year term and paid their rent through automatic withdrawals from their bank account. Pursuant to this agreement, monthly rent was payable in the amount of \$700.00 calculated as follows: \$800.00 less \$100.00 per month pursuant to *Schedule "B" Rental Incentive Agreement* for the first 12 months.

The relevant terms of the *Schedule "B" Rental Incentive Agreement* read as follows:

" ...
Upon signing a 12 month lease agreement the tenant(s) will receive a monthly rental concession in the amount of \$100 for the term of the lease...

If in any case the tenant breaks the lease within the specified time, any and all lease incentives agreed upon during the lease term will be immediately due and payable to [the Landlord]
..."

Paragraph 4 of the tenancy agreement also provided that the Tenants would also be responsible for paying a \$350.00 fee in the event they terminated the lease in less than 12 months.

The Tenants vacated the property prior to the expiration of the fixed term and therefore terminated the lease.

The Landlord sought the sum of \$1,100.00 representing the \$100.00 rental concession for the 11 months of the tenancy, as well as \$350.00 pursuant to paragraph 4.

The Landlord also claimed \$190.00 for maintenance and cleaning costs due to the condition it was left in by the Tenants. Introduced in evidence was a copy of the "Move in/Move Out/Charge Analysis" which provided a detailed breakdown of the amounts claimed by the Landlord for this amount.

In summary, the Landlord claims as follows:

Cleaning and maintenance	\$190.00
Liquidated damages	\$350.00

Repayment of the rental incentive of \$100.00 per month for 11 months	\$1,100.00
Filing fee	\$100.00
Total claimed	\$1,740.00

The Landlord also sought to retain the Tenants' security deposit in the amount of \$400.00 in addition to the \$200.00 pet damage deposit.

During the hearing, the Landlord's agent confirmed that none of the cleaning charges related to the Tenants' pets.

S.B. testified on behalf of the Tenants. She stated that she replaced the light bulbs several times. She also stated that she had "written sentiments" to the Landlord about items which required repair and he refused to take care of them and that is why they left before the end of the fixed term.

S.F. also testified on behalf of the Tenants. S.F. stated that the Tenants do not believe they should be required to pay the \$100.00 per month concession or \$350.00 fee when the rental unit was not "in good working order".

Neither S.B. nor S.F. disputed the \$190.00 charged by the Landlord for the cleaning and maintenance fees.

Analysis

Based on the evidence filed, the testimony and submissions of the parties and on a balance of probabilities, I find as follows.

The tenancy agreement provides that the Tenants would be responsible for repaying the \$100.00 monthly rent concession in addition to the \$350.00 charge in the event they terminated the tenancy prior to the 12 month term. There was no dispute that they failed to fulfil the 12 month term. The Tenants accepted and benefitted from this \$100.00 per month reduction in rent and, in agreeing to the terms of the tenancy agreement, agreed to repay those funds in the event they did not fulfil their obligations pursuant to the *Rental Incentive Agreement*.

A tenancy agreement is a contract, and the parties are bound by its terms. I find that the Tenants failed to submit any evidence to support a finding that the contract should be set aside on the accepted grounds of misrepresentation, mistake, duress, illegality or unconscionability.

Accordingly, I find the Landlord is entitled to recover the **\$1,100.00** rental concession in addition to the **\$350.00** fee pursuant to paragraph 4 of the tenancy agreement.

Should the Tenants believe they are entitled to compensation from the Landlord, they must make their own application for dispute resolution and submit evidence in support of their claims.

As noted, the Tenants did not dispute the **\$190.00** charged by the Landlord for maintenance and cleaning. Accordingly, I award the Landlord compensation for this amount.

As the Landlord has been substantially successful, I also award the Landlord recovery of the **\$100.00** filing fee.

I will now address the Landlord's request to retain the Tenants' security and pet damage deposit against the amounts awarded. These are separate funds, and are to be dealt with individually.

I find, pursuant to section 38(4)(b), that the Landlord may retain the Tenants' security deposit in the amount of **\$400.00** towards the amounts awarded.

The Landlord's agent conceded that none of the amounts claimed by the Landlord relate to the Tenants' pets. Accordingly, pursuant to section 38(1) of the *Residential Tenancy Act*, the Landlord was required to return the \$200.00 pet damage deposit to the Tenants within 15 days of the end of the tenancy.

Section 38(6) provides that a Landlord who breaches section 38(1) must pay the Tenants double the amount of the deposit. As the Landlord had no valid claim against the \$200.00 pet damage deposit, I find the Tenants are entitled to the sum of **\$400.00** representing double the amount of the pet damage deposit.

As I have awarded both parties compensation from the other, these amounts are to be offset as follows:

Cleaning and maintenance costs incurred by Landlord	\$190.00
Fee charged pursuant to paragraph 4 of the tenancy agreement	\$350.00
Repayment of the rental incentive of \$100.00 per month for 11 months	\$1,100.00
Filing fee	\$100.00
Total awarded to Landlord	\$1,740.00
<i>Less security deposit retained by Landlord</i>	<i>\$400.00</i>
<i>Less amounts due to Tenant for double the pet damage deposit</i>	<i>\$400.00</i>
Total monetary Order in favour of Landlord	\$940.00

I grant the Landlord a Monetary Order under section 67 for the balance due of **\$940.00**. This Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Landlord is entitled to compensation for cleaning and maintenance, recovery of the \$100.00 per month rental concession, and the \$350.00 fee charged for the Tenants terminating the fixed term tenancy as well as the filing fee. The Landlord may retain the Tenants' security deposit as partial payment of these amounts.

Having no valid claim against the pet damage deposit, the Landlord must, pursuant to section 38(6) repay the Tenants the sum of \$400.00 representing double the initial amount paid of \$200.00.

These amounts are offset one another such that the Landlord is entitled to a Monetary Order in the amount of **\$940.00**.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: September 7, 2016

Residential Tenancy Branch