



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 MNDCLS, MNDLS, MNRLS, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for a monetary order for damages to the unit, site or property, to retain the tenant's security deposit and/or pet damage deposit, for money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail on November 16, 2018 and that the mail was addressed to each tenant at their address and in separate envelopes with one package for each tenant. Three registered mail tracking numbers have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website the registered mail packages were signed for and accepted on November 17, 2017.

Based on the undisputed testimony before me and the registered mail tracking numbers provided which were confirmed by way of the online registered mail website, I find the tenants were served with the Notice of Hearing, application and documentary evidence on November 17, 2017 which is the date all three packages were signed for and accepted via registered mail. I also accept that the tenants were sufficiently served with

the landlord's documentary evidence under the *Act*. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and sent by regular mail to the tenants who did not attend the hearing to provide their email addresses.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2015 and reverted to a month to month tenancy after one year. The agent stated that the tenants vacated the rental unit on November 2, 2017. During the tenancy monthly rent was \$900.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$450.00 which the landlord continues to hold.

The landlord is claiming \$1,255.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning and maintenance repair	\$295.00
2. Unpaid rent for November 1-2, 2017 and loss of rent for November 3-30, 2017	\$900.00
3. NSF/late fee for September 2017	\$25.00
4. NSF/late fee for October 2017	\$25.00
5. Unpaid portion of October 2017 rent	\$10.00
TOTAL	\$1,255.00

Regarding item 1, the agent testified that the tenants "skipped" by vacating the rental unit without notice. The agent referred to many colour photos submitted in evidence

which the agent affirmed supports that the tenants left the rental unit in a dirty condition that includes but is not limited to the following:

- A. Dirty tub
- B. Broken blinds
- C. Garbage left behind
- D. Dirty toilet
- E. Freezer items left behind
- F. Dirty cupboards
- G. Stencil left on wall
- H. Hole in door
- I. Dirty oven
- J. Furniture abandoned and considered less than \$500.00 which necessitated disposal

The agent testified that the \$295.00 amount is for cleaning costs, time involved and the cost to repair the damages indicated above.

Regarding item 2, the landlord has claimed \$900.00 due to the tenants ending the tenancy without any written notice whatsoever. The agent testified that due to the tenants vacating the rental unit on November 2, 2017, the landlord is seeking unpaid rent for November 1-2, 2017, plus loss of rent for the remainder of November 2017 being November 3-30, 2017, inclusive.

Regarding items 3, 4 and 5, the agent testified that the tenants paid September and October 2017 rent late due to the cheques being returned as non-sufficient funds ("NSF") from the bank and that the tenants continue to owe \$10.00 as the unpaid portion of October 2017 rent.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the testimony and evidence presented supports the landlord's claim and is reasonable. I also find that the tenants breached section 37 of the *Act* which requires the tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the tenants failed to leave the rental unit reasonably

clean and damaged the areas claimed by the landlord beyond reasonable wear and tear.

In addition, section 45(1) of the *Act* applies and states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

[My emphasis added]

Based on the above, I accept the undisputed testimony of the agent that the tenants did not provide any notice in writing to the landlord that they would be vacating the rental unit. Consequently, I find the tenants breached section 45(1) of the *Act*. Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$1,255.00** as claimed.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$1,355.00** comprised of \$1,255.00 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenants' \$450.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$450.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$905.00**.

I caution the tenants to comply with section 37 of the *Act* in the future.

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenants' full security deposit of \$450.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim of \$1,355.00. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$905.00. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: June 25, 2018

Residential Tenancy Branch