



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, MNSD, MNDC, MNR, 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 damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38;
3. A Monetary Order for compensation - Section 67;
4. A Monetary Order for unpaid rent - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on April 18, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on April 23, 2018. The Landlords were 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 May 1, 2016 and ended on April 2, 2018. Rent of \$829.60 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a

security deposit and \$200.00 as a pet deposit. The Parties mutually conducted a move-in inspection on May 1, 2106 with a completed condition report copied to the Tenant. The Parties mutually conducted a move-out inspection on April 2, 2018 with a completed report copied to the Tenant. The Tenant provided her forwarding address at the move-out inspection

The Landlord states that the Tenant failed to leave the unit clean and claims the cleaning costs of \$60.00. No photos were provided as evidence to support this claim and the Landlord confirms that the move-out report notes that nothing was left unclean.

The Landlord states that the Tenant left the laminate flooring damaged and claims \$350.00. The Landlord states that the laminate was new at move-in and provides an invoice for the labour and a work order for the material costs. The Landlord states that although the Landlord did not upload that invoice the amount set out on the work order for the material costs was incurred and that the Landlord is not claiming the full costs paid.

The Landlord states that the Tenant moved out of the unit without notice on April 2, 2018 and paid no rent for April 2018. The Landlord claims \$55.31 for two days rent. The Landlord states that the unit was advertised at the monthly rental rate of \$1,050.00 and that a new tenant was obtained for April 10, 2018. The Landlord claims lost rental income of \$193.57.

The Landlord states that the Tenant signed an agreement for the Landlord to retain \$410.00 of the security and pet deposit for the cleaning and laminate costs.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that the Tenant remained in the unit until April 2, 2018 and paid no rent for April, 2018 I find that the Landlord has substantiated an entitlement to unpaid rent for April 1 and 2, 2018 inclusive. As the rent was \$829.60 and as there are 30 days in the month I calculate the per diem rent for this month at \$27.65. Based on this calculation, I find that the Landlord is entitled to unpaid rent of **\$55.30**.

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the evidence of advertising the unit for a much higher rent than was paid by the Tenant I find that the Landlord failed to take any reasonable steps to mitigate the lost rental income now being claimed and I dismiss the claim for lost rental income.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Blacks Law Dictionary defines an unconscionable bargain as one which "no man in his senses, not under delusion, would make, on the one hand, and which no other fair and honest man would accept, on the other." As the move-out condition report shows that there was no cleaning required to the unit and as the Landlord provided no other evidence of uncleanness such as photos I find that the Landlord has not substantiated that the Tenant left the unit unclean. Further I consider that the bargain obtained from the Tenant to retain a portion of security costs for a damage that was not present to be an unconscionable bargain. I therefore dismiss the claim for cleaning costs of \$60.00.

As the move-in report notes the laminate as being new while the move-out report notes the damage to the laminate flooring and considering the costs being claimed are less than those incurred by the Landlord, I find that the Landlord has substantiated that the Tenant damaged the laminate, that the laminate was new, that the costs were incurred and that the Landlord acted

reasonably to mitigate the costs being claimed for its replacement. I find that the Landlord is therefore entitled to the claimed amount of **\$350.00**.

As the Landlord's claims have had some merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$505.31**. Deducting the combined security and pet deposit plus zero interest of **\$600.00** from this entitlement leaves **\$94.69** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$505.31.00 from the security deposit plus interest of \$600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$94.69**. 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: October 24, 2018

Residential Tenancy Branch