



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STARLINE HOMES(1992) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a one year fixed term tenancy that began on June 1, 2018 and was to expire on May 31, 2019. Rent in the amount of \$2,300.00 was payable on the first of each month. The tenants paid a security deposit of \$1,150.00. The parties agreed that the tenants vacated on or about November 1, 2018; Rent for

November 2018, was paid and the move-out inspection was conducted on November 28, 2018. I find the tenancy legally ended on November 28, 2018.

The landlord claims as follows:

a.	Cost of re-renting premise	\$1,207.50
b.	Filing fee	\$ 100.00
	Total claimed	\$1,307.50

The landlord's agent testified that the tenants' ended their tenancy prior to the expiry of the fixed term tenancy. The agent stated that clause 2(a) of the tenancy states that the tenants will pay the fees of re-renting the premises which is half a month rent and the goods and services tax (the "GST"). Filed in evidence is a copy of the tenancy agreement. Filed in evidence is an invoice for re-renting.

The tenants testified that they asked the landlord permission to end the tenancy, which was given. The tenants stated that this should be considered a mutual agreement to the tenancy.

The tenants testified that at no time did the landlord indicate that they would be collecting this fee, as they would have remained in the rental unit until the expiry of their fixed term.

The tenants testified that they asked the landlord several time if they would be getting their security deposit returned; however, the landlord did not respond.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term 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,

*(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy,** and*

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

I am satisfied that the tenants breached section 45(2) of the Act and their tenancy agreement. The tenants gave notice to end their tenancy prior to the date specified in their tenancy agreement.

Even, if I accept that the landlord gave permission for the tenants to leave, that does not waive the landlord's rights under the tenancy agreement. I do not accept that it was a mutual agreement to end the tenancy, as a mutual agreement to end the tenancy is done in writing and signed by the parties. More often than not, a mutual agreement to end the tenancy is done when both parties have an interest in ending the tenancy. This is not the case before me as the tenants ended their tenancy due to changes in their family.

In this case, the tenancy agreement contains a clause, that the tenants will pay the fees for re-renting the premise. I find the tenants are responsible to pay the re-renting fee as stated in their tenancy agreement. Therefore, I find the landlord is entitled to recover the cost, equal to half of one month's rent and the GST in the amount of **\$1,207.50**.

I find that the landlord has established a total monetary claim of **\$1,307.50** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,150.00** partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$157.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 02, 2019

Residential Tenancy Branch