



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, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on May 12, 2015 for a Monetary Order for: damage to the rental unit; for unpaid rent; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the 15 minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address which was provided on the last day of the tenancy by the Tenant. This was served by registered mail on May 15, 2015.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the documents for this hearing on May 20, 2015.

Issue(s) to be Decided

- Is the Landlord entitled to three insufficient rent payment fees?
- Is the Landlord entitled to the costs resulting from the lack of cleaning to the rental unit?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the Landlord’s monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on September 1, 2014 and was for a fixed term of six months after which it continued on a month to month basis. Rent under the written tenancy agreement was payable by the Tenant in the amount of \$625.00 on the first day of each month. The Tenant paid a security deposit in the amount of \$312.50 at the start of the tenancy which the Landlord still retains.

The Landlord testified that she completed a move in Condition Inspection Report (the "CIR") before the tenancy started on August 31, 2014 which was provided into evidence. The Landlord testified that the Tenant provided written notice to end the tenancy on April 28, 2015.

The Landlord testified that she arranged to do a move out condition inspection with the Tenant on April 30, 2015 and provided the Tenant with a letter which detailed cleaning instructions to the Tenant. The Landlord testified that on April 30, 2015 she attended the rental unit with the Tenant and discovered that the Tenant had failed to clean the rental unit properly.

The Landlord testified that while the Tenant had cleaned the fridge and floor, the Tenant had failed to clean the stove top, the kitchen countertops and cupboards which had food stains and crumbs in them, and the walls had not been washed down as evidenced by multiple marks and scratches on the wall.

The Landlord pointed to a document titled "MOVE IN / MOVE OUT / CHARGE ANALYSIS" which the Landlord completed during the move out inspection. The Landlord testified that she noted the damages on this document including the failure of the Tenant to complete proper cleaning of the window screen in the living room and kitchen.

The Landlord testified that the Tenant provided her with a forwarding address which she noted on the move out document. The Landlord offered the Tenant an opportunity to rectify the cleaning which the Tenant agreed to do. However, on the return of the Landlord to the rental unit, the Tenant had abandoned the rental unit and failed to sign the move out document.

The Landlord testified that she now seeks to recover the cost of having to clean the rental suite which was left beyond reasonable wear and tear. The Landlord testified that the cleaning was done by their in house cleaner. Based on the amount of cleaning that

had to be done, the Landlord now seeks to recover \$280.00 in total cleaning costs from the Tenant.

The Landlord then testified that during January, February and March 2015, the Tenant's rent cheques for these months has been returned as has having insufficient funds in his bank account. The Landlord pointed to section 7 of the written tenancy agreement provided into evidence which provides that the Landlord may charge \$25.00 for any cheque returned to them as having insufficient funds.

The Landlord explained that the previous property manager had requested this amount from the Tenant during the months it was payable. However, the Tenant kept refusing to make this payment, only choosing to pay the rent amount after the cheque had been returned as unpaid. As a result, the Landlord seeks to recover \$75.00 (3 x \$25.00). The total amount sought by the Landlord is \$355.00

Analysis

The evidence suggests that the Landlord was provided with a forwarding address on April 30, 2015 in writing by the Tenant. The Landlord made the Application on May 12, 2015. Therefore, I find that the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for this fee. Although I am not able to clearly read the fax copy of the tenancy agreement provided into evidence, I accept the Landlord's oral testimony that the tenancy agreement provided for the fee claimed by the Landlord. I accept the Landlord's oral testimony that the Tenant failed to pay this fee for the three months claimed. Therefore, I award the Landlord **\$75.00** for these non-refundable fees.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenant provided no evidence prior to the hearing to dispute the preponderance of evidence provided by the Landlord in respect of the cleaning costs claimed by the Landlord. Therefore, I rely on the undisputed testimony and documentary evidence of the Landlord to make findings in this respect.

I find that on the evidence on the balance of probabilities suggests that the Tenant failed to clean the rental suite including the window screens in accordance with the requirement stipulated by the Act. Therefore, I am satisfied that the Landlord incurred **\$280.00** in costs to remedy the damages and find the Landlord is entitled to recovery of it.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$405.00**.

As the Landlord already holds **\$312.50** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$92.50**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant breached the Regulations by not paying insufficient fund fees for rent and has breached the Act by not cleaning the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance in the amount of \$92.50.

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 01, 2015

Residential Tenancy Branch

