



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damage to the unit site or property and the filing fee.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, damages, and the filing fee?

Background and Evidence

The Landlord and Tenants agreed that they have a tenancy agreement which commenced October 2010 and ended September 30, 2011 when the Tenants moved out. The parties agreed that the rent was \$1,500.00 per month, due on the fifteenth of the month.

The Tenants stated that they were in rent arrears for several months with the Landlord and had been making cash payments whenever they could by dropping the cash off in an envelope with staff at the place where the Landlord's wife works. The Tenants stated that they did not get any receipts. The Tenants stated that they received a Notice to End Tenancy for Unpaid Rent from the Landlord in July 2011, but they did not move out right away nor could they pay the outstanding rent. The Tenants stated that when the Landlord made an Application for dispute resolution and a hearing was scheduled, they moved out September 30, 2011. The Tenants acknowledged that they had not paid the rent for August or September 2011, however they thought the unpaid rent issue had been fully calculated and resolved through a prior hearing and decision of October 18, 2011

The Landlord stated that the Tenants were in rent arrears for several months and that the Tenants did not pay the rent for August and September 2011. The Landlord stated that the previous decision of October 18, 2011 dealt with unpaid rent amounts owed to

July 2011 and that all payments received from the Tenants up to the end of the tenancy were considered in the calculation of that decision.

The Tenants stated that they had removed their garbage from the rental unit and the property when their tenancy ended and that the items left behind belonged to prior tenants.

The Landlord stated that he submitted all of his evidence at a prior hearing including photos and that he did not feel he needed to resubmit the evidence for this hearing, stating that the Tenants and our office already had the evidence. The Landlord stated that the Tenants left garbage in the rental unit and the items were their responsibility, and that he incurred damages/costs of \$500.00 to remove their garbage.

The Landlord is requesting a monetary order for unpaid rent for August and September 2011 in the amount of \$3,000.00 (\$1,500.00 x 2 months). The Landlord is also requesting \$500.00 as damages/costs incurred for garbage removal from the rental unit.

Analysis

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

The parties agreed that the tenancy ended on September 30, 2011 when the Tenants moved out and that the rent had not been paid for August or September 30, 2011.

There was a prior decision issued on October 18, 2011 on cross applications of the parties, addressing a claim from the Landlord for unpaid rental amounts up to and including July 2011 rent, and damages amounts claimed by the Tenants in relation to their tenancy. The October 18, 2011 decision dismissed the Tenants' damages claim, and awarded the Landlord unpaid rental amounts. The decision of October 18, 2011 clearly shows that "the landlord stated that the tenants also did not pay the August or September rent and the landlord will submit a new application to recover this unpaid rent." As a result, I find that the amounts claimed in the Application before me are not issues that have been previously heard and decided upon.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the fifteenth of the month. The Tenants owe the Landlord a total of \$3,000.00 for rent for the months of August and September 2011 (\$1,500.00 x 2 months). I find that the Landlord has established a monetary claim of \$3,000.00.

With regards to the Landlord's damages claim, section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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, the balance of probabilities. To prove a loss and have the Respondent pay for the loss, the Applicant must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord was required to provide any evidence to support his claim in advance of the hearing. The Landlord stated that he is relying on evidence submitted in a past Application which he made some months ago. The Landlord stated that he did not provide this evidence with this Application in advance of the hearing to my office or to the Tenants, as he thought we would already have it from the prior hearing. The prior hearing on October 18, 2011 was for separate issues, with a different Dispute Resolution Officer. The hearing package of documents provided to the Applicant contains instructions on evidence and the deadlines to submit evidence to each party, as does the Notice of Hearing. I find that the Landlord did not comply with evidence requirements.

The Residential Tenancy Branch Rules of Procedures (the "Rules of Procedures") state the following with regards to evidence:

3.4 Evidence to be filed with the Application for Dispute Resolution

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to

rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

The responsibility of proving a claim is on the person (Applicant) making the claim, however the Landlord has failed to provide any evidence to support his claim. I find that the Landlord is not entitled to any compensation for damages to the unit site or property as he has failed to prove his claim. As a result the Landlord's claim for \$500.00 for garbage removal is dismissed.

As the Landlord has in part succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$3,050.00 (unpaid rent for August and September 2011 in the amount of \$3,000.00, plus the filing fee \$50.00).

I grant the Landlord an order under section 67 for **\$3,050.00**.

Conclusion

I find that the Landlord is entitled to monetary order pursuant to section 67 against the Tenants in the amount of **\$3,050.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: February 01, 2012.

Residential Tenancy Branch