



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The evidence of the landlord's agent was the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 23, 2012, a Canada post tracking number was provided as evidence of service.

Given the above, I find the tenant was served in accordance with the *Act*. I note that refusal or failure to accept service is not grounds for a Review.

The landlord's agent appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to at the hearing.

Issues to be Decided

Is the landlord entitled to monetary order for unpaid rent?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began on November 1, 2011. Rent in the amount of \$475.00 was payable on the first of each month. A security deposit of \$237.50 was paid by the tenant. The tenancy ended on May 14, 2012. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid rent for April 2012 and May 2012	\$593.63
b.	Filing fee	\$50.00
	Total claimed	\$543.63

The landlord's agent testified the tenant did not pay any rent for April 2012. The landlord's agent stated because of the tenants failure to pay rent the tenant was evicted from the rental unit and vacated the unit on May 14, 2012. The landlord's agent stated they agreed with the tenant to prorate the rent for May 2012, however, the rent for May was not paid.

The landlord's agent testified when they performed the move-out inspection with the tenant, the tenant paid \$100.00 towards outstanding rent and it was acknowledged by the tenant on the report that rent still owed. Filed in evidence is a copy of the move-out inspection report.

The landlord's agent testified the tenant has also cause significant damage to the unit and seeks leave to file that application at a later date.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

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

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord was the tenant did not pay rent owed for April and May 2012, and total rent due is \$593.63. On the move-out inspection report the tenant acknowledged rent was owed. I find the tenant has breached section 26 of the Act when the tenant failed to pay rent when due under the terms of the tenancy agreement and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$593.63**.

I find that the landlord has established a total monetary claim of **\$643.63** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$237.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$406.13**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the landlord's application filed was not claiming for damages to the unit. The landlord is entitled to apply for damages to the unit at a later date.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim. 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: January 09, 2013.

Residential Tenancy Branch

