

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, for damages to the unit and the filing fee for the claim.

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.

Preliminary issue

At the outset of the hearing the tenant stated he vacated the rental unit on January 30, 2013. The tenant consented to the landlord obtaining an immediate order of possession of the rental unit. Therefore, I grant the landlord an order of possession effective immediately.

At the outset of the hearing the landlord withdraws the claims for damages to the unit. The landlord is at liberty to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit or pet deposit?

Is the landlord entitled to recover the cost of filing their application?

Background and Evidence

The tenancy began on December 2011. Rent in the amount of \$650.00 was payable on the 24th of each month. A security deposit of \$325.00 and pet damage deposit of \$200.00 were paid by the tenant.

The landlord testified the tenant was in rent arrears in the amount of \$370.00 on December 20, 2012 and the tenant did not pay any rent for December 2012 or January 2013. The landlord seeks to recover unpaid rent in the amount of **\$1,670.00**. Filed in evidence is a detail list of rent owed.

The tenant testified he did not believe he was required to pay any rent once served with a notice of eviction. The tenant also believes the amount is high, however, has not done any calculations to dispute the amount owed.

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.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, landlord has the burden of proof to prove.

Section 26 of the Residential Tenancy Act states:

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.*

In this case, the tenant believed he was not required to pay rent once served with a eviction notice. However, the Act states the tenant must pay rent when it is due under the tenancy agreement. I find the tenant has breached section 26 of the Act, when they failed to pay rent when due under the tenancy agreement and the landlord suffered a loss of rent

The tenant did not dispute rent was owed and provided no evidence that the amount owed was incorrect. The landlord filed into evidence a detail calculation of rent owed. As a result, I accept the landlord's evidence that the amount of rent owed was \$1,670.00.

I find that the landlord has established a total monetary claim of **\$1,670.00** comprised of unpaid rent and the \$50.00 fee paid for this application.

I order that the landlord retain the pet damage deposit (\$200.00) and security deposit (\$325.00) in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,195.00**.

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

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary and may keep the security deposit and pet damage 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: January 31, 2013

Residential Tenancy Branch

