



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLD TEAM MNAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Code 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 tenants did not attend the hearing, service of the Application for Dispute Resolution and Notice of Hearing were considered.

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

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 20, 2013, Canada post tracking numbers were provided as evidence of service, and the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

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

Issues to be Decided

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

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

Background and Evidence

The parties entered into a new tenancy agreement, which added the co-tenant (RD). The co-tenancy began on December, 1, 2012. Rent in the amount of \$880.00 was

payable on the first of each month. A security deposit of \$450.00 was paid by the tenants. The tenancy ended on February 27, 2013.

The landlord's agent testified the tenants' rent cheque for February 2013, was returned by the bank for non-sufficient funds (the "NSF"). The agent stated the tenants moved from the rental unit on February 27, 2013, without paying the rent owed for February and they did not pay the NSF fee that is collectable under the terms of the tenancy agreement. The landlord seeks to recover the amount of \$905.00.

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, the landlord has the burden of proof to prove their claim.

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.*

The evidence of the landlord's agent was the tenants' rent cheque for February 2013, was returned by the bank for NSF. The evidence was the tenants vacated the rental unit on February 27, 2013, without paying rent for February 2013, and without paying the NSF fee. I find the tenants have breached the tenancy agreement and the Act, and this has caused losses to the landlord. Therefore, the landlord is entitled to recover unpaid rent and the NSF fee in the amount of **\$905.00**.

I find that the landlord has established a total monetary claim of **\$955.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$505.00**.

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

Conclusion

The landlord is granted a monetary 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: March 15, 2013

Residential Tenancy Branch

