



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, FF

Introduction

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

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on March 30, 2013, the tenants did not appear. I find that the tenant has been duly served in accordance with the Act.

Preliminary Issue

At the outset of the hearing, the landlord's agent stated they are no longer requesting an order of possession as the tenant had abandoned the rental unit during the second week of April 2013, leaving a large amount of garbage behind.

Issue to be Decided

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

Background and Evidence

The tenancy began on in 2009. 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 landlord's agent testified the tenant was in rent arrears of \$50.00 for February 2013, and failed to pay any rent for March 2013 and was served with a ten day notice to end tenancy.

The landlord's agent testified that the tenant did not leave by the effective date of the notice and was still occupying the unit when rent became due on April 1, 2013. The agent stated they were notified by another tenant that the tenant had abandoned the unit during the second week of April 2013, leaving a large amount of garbage behind. The landlord seeks to recover unpaid rent the amount of \$1,000.00.

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, that is, a balance of probabilities.

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.

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 tenant did not pay all rent owed for February 2013 and did not pay any rent for March and April 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord has established a total monetary claim for unpaid rent in the amount of **\$1,000.00**

I order that the landlord retain the security deposit of **\$237.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$762.50**. A copy of this order must be served on the tenant.

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 order for rent due, and may keep the security deposit in partial satisfaction of the claim.

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: April 24, 2013

Residential Tenancy Branch

