



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, OPR, FF

Introduction

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

Both parties appeared, gave 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 parties agreed the tenant has vacated the rental unit. Therefore, I find an order of possession is no longer required.

Issue to be Decided

Is the landlord entitled to a monetary order for non-payment of rent?

Background and Evidence

The parties agreed that rent in the amount of \$700.00 was payable on the first of each month. The parties agreed a security deposit of \$350.00 was paid by the tenant.

The landlord testified that the tenant had provided notice that she was moving from the rental unit at the end of June 2013. The landlord stated that the parties had agreed to extend the effective vacancy date to July 15, 2013. The landlord stated that they agreed that if the tenant vacated on the agreed upon date they would accept payment of rent based on a half of month rent (\$350.00).

The landlord testified that the tenant did not move from the rental unit and did not pay rent for the balance of July (\$350.00) and did not pay any rent for August 2013. The landlord stated on August 2, 2013, the tenant was served with a notice to end tenancy. The landlords' seek compensation for unpaid rent in the amount of \$1,050.00.

The tenant testified that she agreed she did not pay any further rent for July or August 2013. The tenant stated the landlord was in violation of the Act, and she does not have to pay rent as she feels that she is entitled to compensation.

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.

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 landlords have the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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 was the tenant did not vacate the rental unit on July 15, 2013, and did not pay the balance of rent owing for July 2013. The evidence of the landlord was that the tenant then failed to pay rent for August 2013 and was served with a notice to end tenancy.

The evidence of the tenant was that she did not pay any further rent as she feels she is entitled to compensation under the Act. However, the tenant did not have the authority

under the Act, such as an order from an arbitrator to deduct any portion of rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

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 landlords.

I find that the landlords have established a total monetary claim of **\$1,100.00** comprised of unpaid rent for July, August 2013 and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$350.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$750.00**.

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

Conclusion

The tenant failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an order of possession is not required.

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: September 19, 2013

Residential Tenancy Branch

