



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession pursuant to a 2 Month Notice to End Tenancy for Landlords Use of Property, issued on June 25, 2013, for money owed or compensation for loss under the Act, and to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of 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 landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served personally served on the tenant on September 25, 2013, which was witnessed.

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 tenant has been duly served in accordance with the Act.

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

Preliminary issue

At the outset of the hearing the landlord's agent stated that the tenant vacated the rental unit on October 1, 2013, and an order of possession is no longer required.

Issues to be Decided

Is the landlord entitled to monetary compensation for loss under the Act?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on May, 1, 2008. Current rent in the amount of \$1,013.51 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant. The tenant vacated the unit on October 1, 2013.

The landlord's agent testified that the tenancy legally ended on August 31, 2013, by a 2 Month Notice to End Tenancy for Landlord Use of Property, issued on June 25, 2013. File in evidence is a copy of the notice.

The landlord's agent testified that the tenant received compensation for receiving the notice as required by the Act, as the tenant was not required to pay rent for August 2013. The landlord's agent stated that the tenant did not vacate the rental unit on August 31, 2013, as required. The landlord's agent stated the tenant continued to occupy the rental unit for the full month of September 2013, and did not pay any occupancy rent. The landlord seeks to recover occupancy rent for September 2013, in the amount of \$1,013.51.

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 landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

The evidence of the landlord's agent was that the tenant did not dispute the 2 Month Notice to End Tenancy for Landlords Use of Property and the tenant was required to vacate the rental unit on August 31, 2013. The evidence of the landlord's agent was the tenant did not vacate rental on August 31, 2013 and continued to occupy the rental unit until October 1, 2013, and did not pay any occupancy rent.

A tenant is not liable to pay rent after a tenancy has ended. However, if a tenant remains in possession of the rental unit the tenant will be liable to pay occupancy rent for the time period they occupied the unit on a per diem basis until the landlord recovers possession of the rental unit. As a result, I find the tenant breached the Act, when they failed to vacate the rental unit when the tenancy legally ended on August 31, 2013, and the landlord suffered a loss of occupancy rent for September 2013. Therefore, I find the landlord is entitled to compensation for the loss in the amount of **\$1,013.51**.

I find that the landlord has established a total monetary claim of **\$1,063.51** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit **\$425.00** and interest of **\$4.27** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$634.24**.

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: October 30, 2013

Residential Tenancy Branch

