



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR,

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and for a monetary order for unpaid rent.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail which was sent on October 10, 2013, and successfully delivered to the tenant on October 11, 2013. The tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

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

Preliminary matter

At the outset of the hearing the landlord indicated the tenant vacated the unit on October 17, 2013. As a result an order of possession is no longer required.

Issue to be Decided

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

Background and Evidence

The tenancy began on July 1, 2013. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant. The tenant vacated the rental unit on October 17, 2013.

The landlord testified that the tenant failed to pay rent for August, September and October, 2013. The landlords seek to recover the amount of \$2,400.00. The landlord stated that they seek to retain the security deposit to offset the unpaid rent.

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 pay rent owed for August, September and October 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 landlords.

I find that the landlords have established a total monetary claim of **\$2,450.00** comprised of unpaid rent and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$400.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$2,050.00**.

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

Conclusion

The landlords are granted a monetary order and may retain the security deposit in partial satisfaction of the claim. 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: November 18, 2013

Residential Tenancy Branch

