



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LL-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, 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 Notice of Dispute Resolution Hearing was 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 October 25, 2013, Canada post tracking numbers were provided as evidence of service.

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 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 matter

At the outset of the hearing the landlord's agent stated that the tenants abandoned the rental on or about November 5, 2013, and an order of possession is no longer required.

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 tenancy began on September 1, 2013. Rent in the amount of \$1,660.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants. The tenants abandoned the rental unit on or about November 5, 2013.

The landlord claims as follows:

a.	Unpaid rent for October 2013	\$ 1,660.00
b.	Unpaid rent and loss of revenue for November	\$ 1,528.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 3,238.00

The landlord's agent testified that the tenants failed to pay any rent for October 2013, and were served with a notice to end tenancy for non-payment of rent by registered mail, with an effective vacancy date of October 15, 2013. The landlord seeks to recover unpaid rent for October 2013, in the amount of \$1,660.00. File in evidence is a copy of the tenancy agreement. Filed in evidence is a copy of the notice to end tenancy.

The landlord's agent testified that they had not heard from the tenants and went to the rental unit on October 31, 2013, and the tenant's still had their belongings in the unit. The landlord's agent stated they went back to the unit on November 4, 2013, and they determined that the tenants had abandoned the rental unit.

The landlord's agent testified that the tenant's belonging were required to be removed, stored and the rental unit had to be cleaned. The landlord's agent stated they were able to rent the unit to a new tenant on November 29, 2013 and were able to recover a portion of loss rent for November 2013. The landlord seeks to recover the loss of revenue amount of \$1,528.00.

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.

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.

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 did not pay any rent for October 2013. I find the tenants have 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 is entitled to recover unpaid rent in the amount of **\$1,660.00.**

The evidence of the landlord's agent was that on October 31, 2013, they went to the rental unit to see if the tenants had vacated and some of their belongings were still in the rental unit. The evidence of the landlord's agent was that they went back to the unit on November 5, 2013, and they determined the rental unit had been abandoned. The evidence of the landlord's agent was that the tenants' belongings were removed and stored and the rental unit was cleaned and they were unable to rent the unit commencing November 29, 2013. I find the tenants breached the Act, when they abandoned the rental unit and when they failed to clean the rental unit at the end of the tenancy.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a partial loss of rent for November 2013; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The evidence of the landlord's agent was that after the tenants belonging were removed, stored and the rental unit cleaned they were able to find a new tenant and they paid a portion of rent for November. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for November 2013, in the amount of **\$1,528.00**.

I find that the landlord has established a total monetary claim of **\$3,238.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,438.00**.

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: December 06, 2013

Residential Tenancy Branch

