



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The landlord 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 testified the Application for Dispute Resolution and Notice of Hearing were served in person on each tenant on November 29, 2013 at 9:15 pm, which was witnessed. Filed in evidence is a letter from the witness.

I find that the tenant have 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 at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing, the landlord stated the tenants vacated the rental unit on November 30, 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 parties entered into a fixed term tenancy which began on August 1, 2013 and was to expire on July 31, 2014. No security deposit was paid by the tenants.

The landlord stated the rent changes based on summer rates, which the tenants agreed to pay \$650.00 and winter rates, which the tenants agreed to pay \$850.00 as the area is a ski area.

The landlord testified that the tenant failed to pay rent for September which was the summer rate of \$650.00. The landlord stated the tenant failed to pay rent for October and November 2013, which was the winter rate of \$850.00. The landlord seeks to recover unpaid rent \$2,350.00.

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 26 of the Residential Tenancy Act states:

(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 tenants did not pay any rent for September, October and November 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.

However, I find the tenancy agreement does not comply with the Act, as there is no provision under the Residential Tenancy Act that allows a landlord to increase rent based on the season. The landlord may only increase rent in accordance with Part 3, of the Act and only up to the amount calculated in accordance with the regulations. As a result, I find the landlord is only entitled to recover the lower of the two rents in the agreement. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,950.00**

I find that the landlord has established a total monetary claim of **\$2,000.00** comprised of the above described amount and the \$50.00 fee paid for this application.

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 in the above amount.

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: January 30, 2014

Residential Tenancy Branch

