



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for money owed or compensation under the Act, and an order 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 15, 2013.

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.

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.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent for money owed or compensation 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 April 1, 2013. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant. The tenancy ended on November 25, 2013.

The landlord claims as follows:

a.	Unpaid rent for November 2013	\$1,275.00
b.	Loss of rent for December 2013	\$1,300.00
c.	Filing fee	\$ 50.00
	Total claimed	\$2,625.00

The landlord testified that the tenant failed to pay rent for November 2013, and was served with a notice to end tenancy on November 5, 2013. The landlord stated on November 25, 2013, they did a routine inspection of the rental unit and it was discovered that the tenant had abandoned the premises, without paying the rent owed for November 2013. The landlord seeks to recover unpaid rent in the amount of \$1,275.00.

The landlord testified as a result of the tenant breaching the tenancy agreement, they seek to recover loss of rent for December 2013, as they were unable to rent the unit on short notice. The landlord stated that they advertised the unit for rent and showed it to 8 prospective tenants, however, they were unable to rent it for the month of December 2013. The landlord seeks to recover loss of rent in the amount of \$1,300.00.

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 Act states that 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 all rent owed for November 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 landlord. Therefore, I find the landlord is entitled to recover unpaid rent for November 2013, in the amount of **\$1,275.00**.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for December 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

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.

In this case, the evidence of the landlord was the tenant was served with a notice to end tenancy, when they failed to pay rent for November 2013. On November 25, 2013, the landlord discovered the rental unit had been abandoned by the tenant. The evidence of the landlord was that they immediately attempted to find a new tenant for December 1, 2013, however, due to short notice new tenants were not available until January 1, 2014.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for December 2013, in the amount of **\$1,300.00**.

I find that the landlord has established a total monetary claim of **\$2,625.00** 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 **\$650.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,975.00**.

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: January 07, 2014

Residential Tenancy Branch

