



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and for compensation for loss under the Act, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee from the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 30, 2014, the tenant did not appear. A Canada post tracking number was provided as evidence. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared, gave 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 stated the tenant has vacated the rental unit and an order of possession is no longer required.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation or loss under the Act?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 12, 2013. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant. The tenancy ended on February 3, 2014.

The landlord claims as follows:

a.	Unpaid rent for January 2014	\$1,000.00
b.	Loss of rent for February 2014	\$1,000.00
c.	Loss of rent for March 2014	\$1,000.00
d.	Filing fee	\$ 50.00
	Total claimed	\$3,050.00

Unpaid rent for January 2014

The landlord testified that the tenant was served with a Notice to End Tenancy for non-payment of rent on January 16, 2014. The tenant vacated the rental unit on February 3, 2014, without paying any rent for January 2014. The landlord seeks to recover unpaid rent for January 2014, the amount of \$1,000.00.

Loss of rent for February and March 2014

The landlord testified that the tenant did not vacate the premises until February 3, 2014, and that the tenant did not pay any rent February 2014. The landlord stated that on February 8, 2014, he advertised the rental unit on several local popular websites, but was unable to find a new renter until March 15, 2014. The landlord seeks to recover loss of rent for February and a portion of March 2014, in the total amount of \$1,500.00.

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.

Unpaid rent for January 2014

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 January 2014. 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 in the amount of **\$1,000.00.**

Loss of rent for February and March 2014

In this case, the tenant breached the tenancy agreement, when they failed to pay rent for January 2014, and was served with a notice to end tenancy on January 16, 2014. The effective vacancy date in the notice was January 16, 2014, however, under the Act, that date automatically corrects to the earliest date permitted under the Act, which in this case, would be January 26, 2014, as it was personally served on January 16, 2014. Therefore, I find the tenancy ended on January 26, 2014.

In this case, the tenant failed to vacate the premises as required and continued to overheld the rental premises until February 3, 2014. The landlord is entitled to recover unpaid rent for the portion the tenant overheld the premises on a per diem basis.

Further, the landlord is also 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.

As this tenancy agreement was a month to month and the breach occurred in January 2014, I find the earliest date the tenant could have legally ended the tenancy was on February 28, 2014.

Although the landlord made reasonable efforts to re-rent the unit, by advertising, a new renter was not found for any portion February 2014. Therefore, I find the landlord is entitled to recover unpaid rent for the portion the tenant overheld the premises and for loss of revenue for the balance February 2014, in the amount of \$1,000.00.

The landlord further seeks compensation for loss of revenue for March 2014, however, I find the landlord is not entitled to loss of rent for March 2014, as this was a month to month agreement and landlord was only entitled to receive rent up to the earliest date the tenant could have legally ended the tenancy, which I found was February 28, 2014.

I find that the landlord has established a total monetary claim of **\$2,050.00** 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 **\$500.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$1,550.00**.

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: March 28, 2014

Residential Tenancy Branch

