



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, 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 utilities 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 February 14, 2104, a Canada post tracking number was 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 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 at the hearing.

Preliminary Matter

At the outset of the hearing the landlord indicated the two respondents listed in their application are the same person as the tenant goes by two different names. As a result, I have amended the style of cause to read, CB also known as CP.

At the outset of the hearing the landlord stated the tenant vacated the rental unit on March 1, 2014 and an order of possession is no longer required.

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on September 1, 2012. Rent in the amount of \$2,500.00 was payable on the first of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$50.00 were paid by the tenant.

The tenancy ended on February 28, 2014, as the tenant did not dispute a 2 Month Notice to End tenancy for Landlord's Use of Property, although the tenant overheld the rental premises until March 1, 2014. The landlord stated the tenant received compensation for receiving the notice as they did not pay rent for February 2014.

The landlord claims as follows:

a.	Unpaid rent for November, December 2013 and January 2014	\$ 1,500.00
b.	Unpaid utilities	\$ 1,267.32
c.	Filing fee	\$ 50.00
	Total claimed	\$ 2,817.32

The landlord testified that tenant did not pay all rent due for November, December 2013 and January 2014. The landlord stated the tenant only paid \$2,000.00 for each of those months leaving a balance of \$500.00 for each month. The landlords seek to recover unpaid rent in the amount of \$1,500.00.

The landlord testified the tenant failed to pay her portion of the water bill since the start of the tenancy. The landlords seek to recover the amount of \$1,267.32. Filed in evidence are copies of the water invoices.

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 undisputed evidence of the landlord was the tenant did not pay all rent owed for November, December 2013 and 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 landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$1,500.00**.

The undisputed evidence of the landlord was the tenant was required to pay a portion of the water utility. I find the tenant breached the Act, when they failed to pay their portion of the water utilities. Therefore, I find the landlords are entitled to recover unpaid utilities in the amount of **\$1,267.32**.

I find that the landlords have established a total monetary claim of **\$2,817.32** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and pet damage deposit of **\$1,750.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$1,067.32**.

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 keep the security deposit and pet damage deposit in partial satisfaction of the claim and 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: April 02, 2014

Residential Tenancy Branch

