



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

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, 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. The tenant AC appeared.

Preliminary matters

As the tenant KP, 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 24, 2014, 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 KP has been duly served in accordance with the Act.

It is important to note that the landlord provided an amended monetary claim within their documentary evidence which was not provided to the tenants. The landlord did not amend their Application in accordance with the provisions of Rule 2.5. Therefore, I have not allowed the amendment; I have only considered the landlord's monetary claim as it was filed in their Application on February 24, 2014.

At the outset of the hearing the landlord's agent stated the tenants have vacated the premises and an order of possession is no longer required.

Both the landlord's agent and the tenant AC gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

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 parties entered into a fixed term tenancy which began on January 1, 2014 and was to expire on December 31, 2014. Rent in the amount of \$1,150.00 was payable on the first of each month. A security deposit of \$575.00 was paid by the tenants.

The landlord claims as follows:

a.	Unpaid rent, late fees for January and February 2014	\$1,487.50
b.	Filing fee	\$ 50.00
	Total claimed	\$1,537.50

The landlord's agent testified that the tenants failed to pay all rent owed for January and February 2014. The landlord seeks to recover unpaid rent in the amount of \$1,437.50.

The landlord's agent testified that term 10 of the tenancy agreement allows them to collect a late rent fee in the amount of \$25.00. The landlord seeks to recover the late fees for January and February 2014, in the amount of \$50.00.

The tenant admitted rent is owed to the landlord. The tenant stated she should not be responsible for the balance owed and it would be unfair to her as it was the responsibility of the co-tenant to pay their portion of rent.

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 tenant AM, agreed rent is owed to the landlord. The tenant AM stated she should not be responsible as she paid her portion of rent to the landlord and it was the co-tenant who failed to pay their portion of rent.

In this case, the tenants may have agreed to divide the rent equally amongst them, however, the tenants rented the same rental unit under the same tenancy agreement and they are jointly responsible for meeting the terms of the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Therefore, I find the tenants breached the Act, when they failed to pay all rent owed for January, February 2014, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,437.50**.

I further find, the tenancy agreement allows the landlord to collect a late fee of \$25.00, as the tenant has not paid all rent for January and February 2014, I find that the landlord is entitled to recover the late fees in the amount of \$50.00

The landlord has established a total monetary claim of **\$1,537.50** 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 **\$575.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$962.50**.

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 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 16, 2014

Residential Tenancy Branch

