



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement and to keep all or part of the security deposit.

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 sent by registered mail sent on April 13, 2014, Canada post tracking numbers were 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 tenants have 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.

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 monetary compensation for damages or loss 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 October, 1, 2013. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

On December 19, 2013, the landlord obtained an order of possession and a monetary order for unpaid rent for November 2013. The landlord stated the tenants failed to comply with the order of possession and a Supreme Court Writ of Possession was obtained and the bailiffs enforced the order on January 3, 2014 by removing the tenants from the rental premises.

The landlord claims as follows:

| | | |
|----|--------------------------------------|-------------------|
| a. | Unpaid rent for December 2013 | \$2,000.00 |
| b. | prorated rent for January 1, 2, 2014 | \$ 131.50 |
| c. | Filing fee | \$ 50.00 |
| | Total claimed | \$2,181.50 |

The landlord testified that the tenants occupied the rental premises for all of December 2013 and for the first three days of January 2014. The landlord stated that he seeks to recover unpaid rent for December 2013 and prorated rent for January 2014 as stated above.

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.

In this case, the landlord received an order of possession on December 19, 2013 as the tenants failed to pay rent for November 2013. The tenants failed to comply with the order of possession, as they were required to give the landlord vacate possession of the rental premises within two day of receiving the order.

On January 3, 2014 the bailiff's attended the rental premises, with a writ of possession from Supreme Court and had the tenants removed from the premises. The tenants did not pay the landlord any occupancy rent for December 2013 or January 2014, although they still had legal possession of the rental premises.

I find the tenants have breached the Act and the tenancy agreement when they failed to vacate the premise as ordered and when they failed to pay occupancy rent to the landlord. As a result, the landlord suffered a loss of rent for December 2013 and January 2014. Therefore, I find the landlord is entitled to money owed for December 2013 and for January 1, 2, 2014 in the amount of **\$2,131.50**.

I find that the landlord has established a total monetary claim of **\$2,181.50** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,181.50**.

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 order 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: August 07, 2014

Residential Tenancy Branch

