



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, CNC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause, issued on April 17, 2014;
and
2. To recover the cost of filing the application.

Both parties appeared, 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.

Preliminary matters

At the outset of the hearing the parties agreed that the tenants have vacated the rental premises. As a result, I find there is no requirement for me to hear the tenants' application to cancel a notice to end tenancy or the landlord's application for an order of possession. Therefore, I dismiss this portion of their respective claims.

As there was no requirement to hear the tenants' application, the tenants are not entitled to recover the filing fee from the landlord.

Issues to be Decided

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

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The landlord claims as follows:

a.	Unpaid rent	\$2,990.61
b.	Filing fee	\$ 50.00
	Total claimed	\$3,040.61

The landlord testified that as of May 1, 2014, the tenants were in rent arrears of \$3,590.61. The landlord stated that they received a partial payment towards rent arrears in the amount of \$600.00 on May 3, 2014 from the tenants. The landlord seeks a monetary order for the balance due of unpaid rent in the amount of \$2,990.61.

The tenants do not dispute the amount owed to the landlord for unpaid 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 evidence of the both parties was that the tenants have failed to pay all rent owed under the terms of the tenancy agreement. I find the tenants have 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 landlord is entitled to recover unpaid rent in the amount of **\$2,990.61**.

I find that the landlord has established a total monetary claim of **\$3,040.61** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,790.61**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed.

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: June 12, 2014

Residential Tenancy Branch

