



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

OPR, MNR

Introduction

On September 16, 2014, the landlord's application for dispute resolution was heard under the Direct Request Procedure, pursuant to section 55(4) of the Residential Tenancy Act. The landlord was granted an order of possession and a monetary order for unpaid rent.

On September 23, 2014, the tenant made an application for review consideration, which was granted. The Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary or set aside the original decision and orders.

This new hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid rent.

The landlord appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to at the hearing.

Preliminary matters

At the outset of the hearing, the landlord stated that he no longer required an order of possession as on November 3, 2014, he received an order of possession based on an application to end tenancy early.

At the outset of the hearing the landlord requested to amend their application to include subsequent unpaid rent since his original application was filed. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include subsequent unpaid rent.

Issue to be Decided

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

Background and Evidence

The tenancy began on August 29, 2014. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was required to be paid by the tenant. However, the tenant's cheque issued for the security deposit was returned by the bank for insufficient funds. Filed in evidence is a copy of the written tenancy agreement.

The landlord testified that the tenant failed to pay rent for the entire time she occupied the rental premise. The landlord stated that the cheque the tenant issued on August 29, 2014, for rent was returned by the bank for insufficient funds and the tenant did not pay rent that was due on September 29, 2014 and October 29, 2014. The landlord seeks a monetary order for unpaid rent in the amount of \$3,750.00.

The tenant submits in their application for review consideration filed on September 23, 2014, that there was a payment arrangement with the landlord, confirming rent was owed at the time she filed her application for review consideration.

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.

I accept the landlord's undisputed testimony that the tenant failed to pay rent due on August 29, 2014, September 29, 2014 and October 29, 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.

I find that the landlord has established a total monetary claim of **\$3,800.00** comprised of unpaid rent as described above and the \$50.00 fee paid for this application.

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

Therefore, the original decision and orders made on September 16, 2014, are set aside and replace with this decision and order.

Conclusion

The original decision and orders made on September 16, 2014, are set aside.

The landlord is granted a monetary order in the above amount.

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: November 18, 2014

Residential Tenancy Branch

