



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LIMITED
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 filed under the Residential Tenancy Act (the "Act"), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord's agent 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's agent testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 29, 2015. The agent provided the Canada post tracking number and indicated that the item was successful delivered to the tenant on January 30, 2015.

I find that the tenant has been duly served in accordance with the Act.

Preliminary issue

At the outset of the hearing the landlord's agent indicated that the tenant vacated the rental premise on February 21, 2015 and an order of possession is no longer required.

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 tenancy began on April 1, 2003. Current rent in the amount of \$758.00 was payable on the first of each month. The tenant paid a security deposit of \$305.00. The tenant vacated the rental premise on February 21, 2015.

The landlord's agent testified that the tenant had a balanced of the outstanding rent for December 2014, in the amount of \$170.00. The agent stated that the tenant failed to pay any rent for January 2015 and February 2015. The landlord seeks to recover unpaid rent in the amount of **\$1,686.00**.

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.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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 landlord's agent was the tenant did not pay all rent owed for December 2014, and did not pay any rent for January 2015, and February 2015. 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. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,686.00**.

I find that the landlord has established a total monetary claim of **\$1,736.00** 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 **\$305.00** and interest of **\$10.80** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,420.20**.

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 and the interest 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: February 26, 2015

Residential Tenancy Branch

