



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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 and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing the landlord indicated that the tenant vacated the rental premise on February 28, 2015, and an order of possession is no longer required.

Preliminary matter

Although the landlord listed two respondents in their application, it is clear by the landlord's submission that there is only one respondent and the intent was to show another spelling of the tenant's surname. Therefore, I have amended the style of cause to show one respondent with an "also known as" to reflect the different spelling of the surname.

The landlord 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 17, 2015. The landlord stated they sent two packages, one to each spelling of the tenant's surname. Canada post tracking number 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 tenant has 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 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 June 8, 2014. Rent in the amount of \$1,050.00, was payable on the first of each month. The tenant paid a security deposit of \$525.00. The tenancy ended on February 28, 2015. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that the tenant was having difficulties paying rent and was served with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective vacancy date of February 20, 2015. The landlord stated that they then agreed to mutually end the tenancy effective February 26, 2015; however, the tenant remained in the rental unit until February 28, 2015. Filed in evidence are copies of the above said documents.

The landlord stated that the tenant's rent was not paid in full each month and there was a balance owing for each of the following months:

- September 2014, rent - balance owing of \$150.00;
- October 2014, rent - balance owing of \$550.00;
- November 2014, rent - balance owing of \$350.00;
- December 2014, rent - balance owing of \$850.00;
- January 1, 2015, rent - balance owing of \$150.00; and
- February 2015, rent – no rent was paid (\$1,050.00).

The landlord testified that they seek a monetary order to recover unpaid rent in the amount of \$3,100.00.

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.

...

I accept the landlord's undisputed testimony that the tenant did not pay all rent due under the terms of the tenancy for the months of September 2014, October 2014, November 2014, December 2014, 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 total amount of **\$3,100.00**.

I find that the landlord has established a total monetary claim of **\$3,150.00** 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 **\$525.00** full satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,625.00**.

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: March 12, 2015

Residential Tenancy Branch

