



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, OPC, 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 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 April 10, 2015, a Canada post tracking number was 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's agent appeared gave affirmed 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.

Preliminary matter

At the outset of the hearing the landlord's agent stated that the tenant vacated the rental unit 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 February 1, 2015. Rent in the amount of \$950.00 was payable on the first of each month. The tenant paid a security deposit of \$475.00. The tenancy ended on April 30, 2015.

The landlord claims as follows:

a.	Unpaid rent, late fees for March and April 2015	\$ 1,950.00
b.	Loss of revenue May 2015	\$ 950.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 2,900.00

Unpaid rent, late fees for March and April 2015

The landlord's agent testified that the tenant failed to pay rent for March 2015, and April 2015. The agent stated that clause #10 of the tenancy agreement allows them to collect a late payment fee of \$25.00, for each late payment of rent. The landlord seeks to recover unpaid rent and late fees in the amount of \$1,950.00.

Loss of revenue May 2015

The landlord's agent testified that they further seek to recover loss of rent for May 2015, in the amount of \$950.00.

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.

Unpaid rent, late fees for March and April 2015

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 undisputed evidence of the landlord's agent that the tenant did not pay rent for March 2015 and April 25, 2015 or the late fees permitted in the tenancy agreement. I find the tenant has breached section 26 of the Act and the tenancy agreement when they failed to pay rent and late fees 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, late fees for March 2015, and April 2015, in the amount of **\$1,950.00**.

Loss of revenue May 2015

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings as the principles of natural justice require that a person be informed and given particulars of the claim against.

In this case, the landlord is seeking loss of revenue for May 2015. However, the landlord's application for dispute resolution does not indicate in the details of dispute that loss of revenue for May 2015 was an issue to be considered at this hearing. I find this portion of the landlord's claim does not comply with section 59 of the Act. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

I find that the landlord has established a total monetary claim of **\$2,000.00** 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 **\$475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,525.00**.

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: May 22, 2015

Residential Tenancy Branch

