



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1459 in order to enable the tenant to connect with this teleconference hearing scheduled for 1430. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord GC testified that he personally served the tenant with the dispute resolution package on 13 January 2015. The landlord GC testified that he served the tenant outside of the rental unit. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Preliminary Issue – Scope of Application

The landlords' application seeks a monetary order of \$5,000.00. The "Details of the Dispute" box sets out the following:

tenant did not pay rent for november or december 2014 for 1350.00 a month or 2700 total, damages of 2800 to floor, walls, toilets, showers, and yard, we agree to file for 5000.00 total

[as written]

There is no detailed calculation of how the landlords arrived at their figures.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

To assist with this Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* establishes certain documents that must be served by an applicant:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

[emphasis added]

Rule 3.1(e) set out that a detailed calculation of any monetary claim must be served. The landlords itemised the rent arrears claim but did not provide such an itemization for the damages claim. I find that the landlords did not sufficiently set out the details of their dispute in such a way that the tenant would have known against what claim he was defending. As such, I dismiss the landlords' application to recover the damage amounts from the tenant with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlords, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 October 2014. The parties entered into a written tenancy agreement dated 12 October 2014. I was not provided with a copy of this agreement. Monthly rent of \$1,350.00 was due on the first. The landlord GC testified that the landlords continue to hold the tenant's security deposit in the amount of \$675.00, which was collected 12 October 2014. The tenancy ended 16 January 2014 when the tenant abandoned the rental unit.

The landlord GC testified that with the exception of one-half month of rent for October, the landlords have not received any payments towards rent. The landlord GC testified that November and December rent is outstanding.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord GC testified that \$1,350.00 in rent for this tenancy was due under the tenancy agreement on the first of the month. The landlord GC has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$2,700.00. This amount represents arrears from November and December. There is no evidence before me that indicates that the tenant was permitted to deduct all or a portion of the rent. As such, I find that the landlords have proven their entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

As the landlords were only partially successful in this application, I am exercising my discretion pursuant to section 72 of the Act to award that the landlords are entitled to recover \$25.00, that is, one half of their filing fee.

Conclusion

The landlords' application for damage is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

I issue a monetary order in the landlords' favour in the amount of \$2,050.00 under the following terms:

Item	Amount
Unpaid November Rent	\$1,350.00
Unpaid December Rent	1,350.00
Offset Security Deposit Amount	-675.00
Recovery of Filing Fee for this Application	25.00
Total Monetary Order	\$2,050.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 05, 2015

Residential Tenancy Branch

