



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on May 27, 2015 seeking to obtain a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord gave affirmed testimony that he personally served each Tenant with copies of his application and Notice of Hearing Documents on May 27, 2015, in the presence of a witness. Based on the submissions of the Landlord I concluded that each Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the *Act*. Accordingly, I proceeded to hear the merits of the Landlord's application in absence of the Tenants.

Issue(s) to be Decided

Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a month to month written tenancy agreement that began on June 16, 2012. Rent of \$800.00 was due on or before the fifth (5th) of each month and on June 16, 2012 the Tenants paid \$400.00 as the security deposit.

The Landlord testified that when the Tenants paid \$400.00 towards their March 1, 2015 rent he continued to ask them when they would be paying the remaining \$400.00. The Landlord stated that the Tenants continued to give him excuses about not having work and other stories why they could not pay their past due rent or their rent for April and May 2015.

The Landlord argued that in May 2015 when he went to collect the rent, he told the Tenants he would be filing a claim with the Residential Tenancy Branch. Shortly afterwards the Tenants told him they would be moving out at the end of May. The

Tenants vacated the rental unit by May 31, 2015 and failed to pay the \$2,000.00 owed for rent (\$400.00 March, \$800.00 April, and \$800.00 May, 2015).

The Tenants did not provide the Landlord with a forwarding address. The Landlord remains in possession of the \$400.00 which he requested be offset against the rent owed.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 7 of the *Act* provides, in part, as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I accept the Landlord's undisputed evidence that the Tenants' failed to pay the full rent for March, April and May 2015, as required by their tenancy agreement and in breach of section 26 of the *Act*. This breach caused the Landlord to suffer a \$2,000.00 loss of rent

income which is comprised rent owed as follows: \$400.00 March 2015; \$800.00 April 2015; plus \$800.00 owed for May 2015. Accordingly, I grant the Landlord's claim for unpaid rent in the amount of **\$2,000.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Tenants' paid their \$400.00 security deposit on June 16, 2012 and there was no interest accumulated on this deposit. I conclude that this application meets the requirements to be offset against the Tenants' \$400.00 security in accordance with section 72(2) of the Act, which leaves a balance owed to the Landlord of **\$1,650.00** (\$2,000.00 + \$50.00 - \$400.00).

Conclusion

The Landlord was successful with his application and his monetary award was offset against the Tenants' security deposit leaving a balance owed to the Landlord of \$1,650.00.

Based on the above, the Landlord has been issued a Monetary Order in the amount of **\$1,650.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 07, 2015

Residential Tenancy Branch

