



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and for money owed and an order to retain the security deposit in partial satisfaction of the claim.

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 the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 24, 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 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 and money owed?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on January 1, 2015 and was to expire on December 31, 2105. Rent in the amount of \$775.00 was payable on the first of each month. A security deposit of \$387.50 was paid by the tenant. The tenancy ended on August 20, 2015.

The landlord claims as follows:

a.	Unpaid rent for August 2015	\$ 775.00
b.	Liquidated damages	\$ 300.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,125.00

The landlord's agent testified that the tenant breached the fixed term agreement, when they vacated the rental unit on August 20, 2015. The agent stated that the tenant failed to pay rent for August 2015.

The landlord's agent stated that as the tenant breached the fixed term tenancy agreement they are entitled to recover liquidated damages as defined in clause 5 of the tenancy agreement.

The landlord's agent stated that the tenant has made arrangement for payments and as of today's date they have received \$345.00. The agent stated that they seek permission to retain the security deposit in partial satisfaction and obtain a monetary order for the balance due of \$392.50.

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 have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Section 26 of the Residential Tenancy Act states:

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 any rent for August 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 for August 2015, in the amount of **\$775.00**

Section 45 of the Residential Tenancy Act states:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence of the landlord's agent was that the tenant breached the fixed term tenancy by ending the tenancy on August 20, 2015. However, under the Act the tenant was not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was December 31, 2015.

As, I have found the tenant breached the fixed term agreement, I find the landlord is entitled to recover liquidated damages as specified in the tenancy agreement. Therefore, I find the landlord is entitled to recover the amount of **\$300.00**.

I find that the landlord has established a total monetary claim of **\$1,125.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$387.50** in partial satisfaction of the claim. As the landlord has received **\$345.00** in addition to the security deposit, I grant the landlord an order under section 67 for the balance due of **\$392.50**.

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.

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: April 04, 2016

Residential Tenancy Branch