



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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 issue

At the outset of the hearing the tenant indicated that they are currently vacating the rental premises and will be out of the unit by midnight, July 15, 2016. The parties agreed to meet at the rental unit on July 16, 2016, at 10:00 am to conduct the move-out condition inspection.

Based on the above, I find the landlord is entitled to an order of possession on **July 16, 2016 at 10:00am**. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on or about August 1, 2015. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant.

The landlord testified that the tenant has not paid any rent for May 2016, June 2016, and July 2016. The landlord seeks a monetary order in the amount of \$2,700.00.

The tenant testified that they did not pay any rent because the landlord said that they did not want rent, they just wanted them to leave.

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.. 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.

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.

In this case, the evidence of both parties was the landlord had not received any rent for the above noted months. Although the tenant alleged the landlord did not want rent, I find that highly unlikely, as the landlord's application filed on June 9, 2016, was seeking unpaid rent. I find the tenant has breach section 26 of the Act when they failed to pay rent, and the landlord has suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,700.00**.

I find that the landlord has established a total monetary claim of **\$2,800.00** comprised of the above described amount and the \$100.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

The landlord is at liberty to reapply for damages as that application was made premature.

Conclusion

The landlord is entitled to an order of possession. The landlord is granted a monetary order.

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: July 15, 2016

Residential Tenancy Branch