



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, 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, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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 served on the tenant, in person, on September 4, 2016, which was witness by a third party.

I find that the tenant has been duly served in accordance with the Act.

The landlord 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.

The landlord stated that they were unable to serve their evidence on the tenant.

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

The landlord is claiming for damages to the rental unit. However, in their Application for Dispute Resolution, the landlord writes,

"Im assuming there will be damage past 1000\$ which is the deposit I have from him"

[Reproduced as written.]

In this case tenancy had not legally ended when the landlord made a claim for damages. I find the landlord's claim for damages to the rental unit was premature. Further, 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 application does not provide any particulars of damages to the rental unit and the landlord's evidence was not served on the tenant in accordance with the Act. and the evidence relates to the landlord's claim for damages. I find it reasonable to dismiss this portion of the landlord's claim with leave to reapply.

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 November 2014. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the tenant. The tenancy ended on September 4, 2016.

The landlord claims as follows:

a.	Unpaid rent for July, August and prorated rent for September 2016.	\$2,133.33
b.	Filing fee	\$ 100.00
	Total claimed	\$2,233.33

The landlord testified that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on June 7, 2016, in person, with an effective date of August 31, 2016.

The landlord testified that the tenant did not pay rent for July and August 2016. The landlord seeks unpaid rent in the amount of \$2,000.00. The landlord stated that they should be entitled to four days of rent that the tenant overheld the premises in the amount of 133.33.

The landlord testified that they did not realize that the tenant was entitled to compensation for receiving the Notice.

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.

I accept the undisputed testimony of the landlord that the tenant did not pay any rent for July 2016. I find the tenant breached section 26 of the Act, when they failed to pay rent, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for July 2016, in the amount of **\$1,000.00**.

I accept the undisputed testimony of the landlord that the tenant did not pay rent for August 2016. However, the tenant was served the Notice, pursuant to section 49 of the Act. Section 51 of the Act, states a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent. The tenant may withhold the amount authorized from the last month's rent. As no rent was paid for August 2016, I find the tenant was compensated in accordance with the Act. I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss the landlord's claim for unpaid rent for August 2016.

In this case, the tenant overheld the premises for four days, no occupancy rent was paid. Therefore, I find the landlord is entitled to recover occupant rent in the prorated amount of **\$133.33**.

I find that the landlord has established a total monetary claim of **\$1,233.33** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and pet damage deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$233.33**.

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.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim. The landlord is granted a monetary 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: October 24, 2016

Residential Tenancy Branch

