



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent.

This matter was scheduled on September 16, 2016. The matter was adjourned as the tenants were not denying rent was owed and the only issue was to the amount. An interim decision was made and both parties were required to comply with my orders. The interim decision should be read in conjunction with my decision,

On November 15, 2016, both parties appeared.

At the outset of the hearing the tenant requested an adjournment as they had just been release from the hospital. The landlords objected to the adjournment as they had taken the day off work.

I have considered the tenants request for an adjournment; however, as I had made previous orders on September 16, 2016, which if comply with should make this hearing simply an issue of arithmetic for me to consider and I find it would be unfair to adjourn this matter again as the original application was filed in July 2016. Therefore, I find it appropriate to deny the tenants request for an adjournment.

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.

Issue to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began August 2014. Rent in the amount of \$1,100.00 was payable each month. On August 1, 2016, the property was sold and the security deposit remains with the new landlord.

The landlords testified that the tenants did not pay rent any rent for five consecutive months. This was from October 2014 to February 2015. The landlords stated that March 2015, the tenants made a partial payment of rent. Filed in evidence is a rent ledger.

The landlords testified that they gave the tenants permission to miss the rent payments and to make payments toward the arrears, as the tenant's wife was very ill and they need the money for medication. The landlords stated that although the tenants have been making extra payments from time to time they currently still owe the amount of \$3,600.00.

The landlords testified that when the property was sold they also had to pay the new owners half the rent that was paid in July.

The tenant testified that they were very thankful to the landlords for allowing them to miss these payments as it was a difficult time. The tenant stated that they have reviewed the new spreadsheet provided by the landlord and the only discrepancy they see is that they paid the amount of \$1,600.00 in May 2015. The tenant stated that they know this because they received extra money back from their taxes that month. The tenant acknowledged they did not provide any documentary evidence as order to support this discrepancy as ordered at the previous hearing, such as bank statements.

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 landlords have 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 both parties agreed the tenants did not pay rent for a period of time, as the landlords sympathised to the health needs of the tenants. However, during this time the tenants were accumulating arrears.

The only discrepancy the tenants were disputing was the month of May 2015, as they alleged they received their taxes and paid an extra \$500.00. However, they provided no evidence of this, even after ordered to do so.

Reviewing the rent ledger history filed by the landlords the tenants paid the amounts of \$300.00 in April 2015 and the amount of \$500.00 in April 2016, towards rent arrears. No rent arrears were paid in May 2015 or May 2016. This leading to believe the tenants may have mistaken when they received their returned taxes. Therefore, I find the tenants failed to pay the landlords rent in the amount of **\$3,600.00**.

However, I am not satisfied that the tenants owe any further amount for rent as a result of the property being transferred to the new owners and the landlords giving the new owners half of July 2016, rent. The tenancy agreement shows rent was due on the first of the month. Rent for July 2016 was paid.

This was likely was an administrative error or this amount was related to the transfer of the security deposit as adjustment are often made when property is transferred. However, I am satisfied the tenants paid their rent. Therefore, I dismiss this portion the landlords' claim.

I find that the landlords have established a total monetary claim of **\$3,700.00** comprised of the above described amount and the \$100.00 fee paid for this application. I grant the landlords a formal 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 **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlords are granted a monetary order in the above amount.

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: November 16, 2016

Residential Tenancy Branch