



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by the male landlord and the female tenant.

I note that while the landlords did not specifically identify on their Application for Dispute Resolution that they were seeking a monetary order for rent by checking off the "MNR" code they did identify that the issue was related to the tenant's non-payment of rent and the amount of their claim is the equivalent of one month's rent. As such, I am satisfied the Application for Dispute Resolution sufficiently discloses the landlords were seeking rent.

At the outset of the hearing the landlord clarified that he was seeking compensation for rent for the months of October and November 2016. He also stated that he was seeking compensation for cleaning and damage to the property. However, the landlord confirmed that he had not submitted an Amendment to an Application for Dispute Resolution form prior to the hearing. I declined to accept the landlord's verbal amendment and advised the landlord he remains at liberty to file a separate Application for Dispute Resolution seeking that additional compensation.

The parties also confirmed the tenants had vacated the rental unit. As a result the landlords no longer require an order of possession. I amend the landlord's Application for Dispute Resolution to exclude the matter of possession.

During the hearing the tenant testified that the landlord did not have either of the tenant's names correct on his Application for Dispute Resolution. She provided me the correct names and I have amended the landlords' Application to reflect the correct names.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and for all or part of the security deposit, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2015 for a 1 year and 1 day fixed term tenancy beginning on March 1, 2015 and converted to a month to month tenancy on March 2, 2016 for the monthly rent of \$1,750.00 due on the 1st of each month and a security deposit of \$800.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 5, 2016 with an effective vacancy date of October 5, 2016 due to \$1,750.00 in unpaid rent.

The landlord submitted the tenants failed to pay rent for October 2016 on the day in the month that it was due and they issued the above noted 10 Day Notice. The landlord stated that he went by the house every day and it was not until November 30 or 31 that he could determine that the tenants had moved out of the rental unit.

He stated he could tell they had vacated because there had been rubbish removed from the carport. The tenant testified that they moved out of the unit by October 12, 2016 and that they had called and informed the landlord that they had done so on the same date.

The parties agreed the tenants did not pay rent for the month of October 2016. The landlord submitted that the male tenant contacted him on October 1, 2016 stating they could not pay rent until October 20, 2016 because he had started a new job and would not be paid until then.

The tenant testified that they did not pay rent because they had contacted the landlord prior to the start of October 2016 stating that the male tenant had to travel out of province to attend a family funeral and they would have to wait until the 15th to pay rent.

The landlord seeks also November 2016 rent because the tenants did not give him a 30 day notice to end the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

Despite either parties explanation as to why the tenants did not pay rent on October 1, 2016 when it was due the Section 26 states that they must pay it on the 1st of the month. As the tenants still lived in the rental unit on the day that it was due, I find the tenants still owe the landlord rent for the month of October 2016.

As to the landlords' claim for compensation for November 2016 rent because the tenants did not give the landlord notice to end the tenancy, I find that the tenants were not required to give notice to end the tenancy. I find the tenancy ended as a result of the landlord's 10 Day Notice to End Tenancy when the tenants vacated the unit within the month of October 2016..

Furthermore, despite the fact the parties disagree when the tenants vacated the rental unit both parties confirm the tenants had vacated the rental unit prior to the start of November 2016. As a result, I find the tenants are not obligated to pay any amount of rent for the month of November 2016. I dismiss this portion of the landlords' claim.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,750.00** comprised of rent owed.

I order the landlords may deduct the security deposit and interest held in the amount of \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: December 14, 2016

Residential Tenancy Branch