



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANTHEM NO. 5 ROAD DEVELOPMENTS LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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 or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each 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 served by registered mail sent on November 25, 2016.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, three five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent, 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.

Preliminary and Procedural matter

At the outset of the hearing the landlord was asked if the first name of the respondent JA is spelled correctly in their application. The landlord stated that there was a typographic error in the spelling.

Since the tenant JA would have known that the spelling was a typographical error, I find it appropriate to amend the application to have the correct spelling of the first name.

At the outset of the hearing the landlord indicated the tenants have vacated the rental property and no longer required an order of possession.

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 parties entered into a fixed term tenancy, which began on July 1, 2016 and was to expire on December 31, 2016. Rent in the amount of \$2,300.00 was payable on the first of each month. A security deposit of \$1,150.00 was paid by the tenants.

The landlord's agent testified that the tenants failed to pay rent for November 2016, and were served with a notice to end tenancy on November 2016. The landlord stated that the tenants failed to pay rent prior to vacating the rental unit. The landlord seeks to recover unpaid rent for November 2016, in the amount of \$2,300.00.

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.

The evidence of the landlord's agent was the tenants did not pay any rent for November 2016. I find the tenants have 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 in the amount of **\$2,300.00.**

I find that the landlord has established a total monetary claim of **\$2,400.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,150.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,250.00.**

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 tenant.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal 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: December 19, 2016

Residential Tenancy Branch