



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for damages to the unit and to recover the filing fee from the tenants.

The landlord 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 13, 2017.

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

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 matters

At the outset of the hearing the landlord stated the tenants have vacated the rental premises and they no longer require an order of possession.

In this case, the landlord’s application summary does not indicate that they are claiming a monetary order for unpaid rent. However, the landlord’s application in the particulars of details clearing shows they are seeking monetary compensation for rent owed. Therefore, I am satisfied that the tenants were sufficiently informed of the dispute that is subject to be heard at today’s hearing.

to be Decided

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

Background and Evidence

The parties entered into a fixed term tenancy which began on October 1, 2016 and was to expire on December 1, 2017. Rent in the amount of \$2,250.00 was payable on the first of each month. The tenants paid a security deposit of \$1,125.00 and a pet damage was required; however, it was not paid by the tenants. The tenancy ended on December 16, 2016

The landlord testified that the tenants breached the fixed term agreement by giving notice to end the tenancy for the end of November 2016. The landlord stated that the tenants did not vacate the premises and the new renter they had lined up for December 1, 2016, had to be turned away as the tenants informed them that they would not be leaving until the middle of December 2016. The landlord stated the tenants made a partial payment of rent; however, there was a balance owing for December 2016, in the amount of \$1,100.00.

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.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

In this case, the evidence of the landlord was that the tenants breached the fixed term tenancy by providing notice to end the tenancy effective the end of November 2016. Then the tenant's did not vacate until December 16, 2017. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was December 1, 2017, as stated in the tenancy agreement.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

In this case the tenants paid the landlord a portion of rent for December 2016; however, as the tenants did not vacated on the date originally stated the new renter for December 1, 2016, had to be turned away. I find the tenants are responsibly to pay the full rent to the landlord for December 2016, less the amount paid, for a balance due in the amount of **\$1,100.00**.

I find that the landlord has established a total monetary claim of **\$1,200.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Further, I find it appropriate to offset the amount owed with the security deposit of **\$1,125.00**. I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$75.00**.

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 tenants.

Conclusion

The landlord is granted a monetary order 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: January 23, 2017

Residential Tenancy Branch