



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

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 was to begin on September 1, 2017. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00.

The landlord testified that the tenancy agreement was signed on August 3, 2017, and on August 17, 2017, the tenants informed them that they did not want to live in the rental unit because they did not want to be responsible to cut the grass.

The landlord testified that the tenants short notice did not give them sufficient time to find a new renter for September 1, 2017; however they were able to find a new renter and their tenancy commenced on September 17, 2017. The landlord seeks to recover loss of rent from September 1 to 15, 2017, in the amount of \$650.00.

The tenant testified that they did not take the rental unit because they did not have time to cut grass and that it was also too far from their business. The tenant stated they present other renters to the landlord.

The landlord responded that the tenants sent a copy of a driver's license of someone they did not know. The landlord stated that they never spoke to this person.

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-complying 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.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenants entered into a tenancy agreement on August 3, 2017, which was to commence on September 1, 2017. I find the tenants' obligation under the tenancy agreement and the Act commenced on the date they signed the agreement.

In this case, the tenants did not ever occupy the rental unit and they informed the landlord on August 17, 2017, that they were not moving into the premises; however, the tenants were obligated under the Act to end the tenancy in accordance with Section 45 of the Act. I find the earliest the tenants could have legally ended the tenancy was September 30, 2017. I find the tenants breached the tenancy agreement, the Act and this caused losses to the landlord.

Under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord was that they were able to find a new renter and the new renter's tenancy commenced on September 17, 2017, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent from September 1 to 15, 2017, in the amount of **\$650.00**.

I find that the landlord has established a total monetary claim of **\$750.00** 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 **\$500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$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 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: April 30, 2018

Residential Tenancy Branch