



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for unpaid rent, for a monetary order for damages or compensation under the *Act*, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

The Landlord and his advocate (the "Landlord") attended the hearing, and each were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the 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 had been sent to the Tenant by registered mail on July 27, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Property Manager was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or compensation under the *Act*?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2017. Rent in the amount of \$2,100.00 was to be paid by the first day of each month and the Landlord had been given a \$1,050.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that through a previous decision with this office, he had been issued an Order of Possession and a Monetary Order for May 2018 rent, less the security deposit. The Landlord provided a copy of the previous decision and Order into documentary evidence. The Landlord testified that the Tenant had not paid the rent for June, July, and August 2018.

The Landlord testified that the Tenant moved out of the rental unit on August 8, 2018. The Landlord testified that he did not attempt to re-rent the rental unit after the Tenant left and that his parents had moved into the rental unit. The Landlord is seeking to recover the unpaid rent for June, July and August 2018 and to be compensated for the loss of rental income for September and October 2018.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that the Tenant did not pay the rent for June, July, and August 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy

Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant breached section 26 of the *Act* when he did not pay his rent in accordance with the tenancy agreement. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that he took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to a recovery of the unpaid rent for June, July and August 2018, in the amount of \$6,300.00. I award the Landlord a Monetary Order for the requested amount of \$6,300.00 for the recovery of the unpaid rent.

The Landlord has also claimed for compensation for the loss of rental income for September and October 2018. I accept the testimony of the Landlord that he moved his family into the rental unit as of the end of August 2018. Therefore, I find that the Landlord did not suffer a loss of rental income as he did not intend to rent the unit to another renter. Therefore, I dismiss the Landlord claim for the recovery of lost rental income for September and October 2018.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a Monetary Order in the amount of \$6,400.00; consisting of \$6,300.00 in unpaid rent, and \$100.00 for the recovery of the filing fee.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$6,400.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 27, 2018

Residential Tenancy Branch