



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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, 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 October 18, 2018, Canada post tracking numbers were provided as evidence of service.

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 issue

On November 6, 2018, the tenants ‘application to cancel a notice to end tenancy was heard. The tenants’ application was dismissed and the landlord was granted an order of possession. I have noted the file numbers on the cover page of this decision

Since the order of possession was already given at the previous hearing, I find that matter has already been heard and a decision made. Therefore, only the following remainder issue will be determined at today's hearing.

Issues to be Decided

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

Background and Evidence

The tenancy began on March 1, 2018. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00. The tenants have not complied with the order of possession and are overholding the premises.

The landlord testified that tenants were behind in rent as of September 2018. The landlord stated that for September, October and November 2018, only two months of rent have been paid. The landlord seeks to recover unpaid rent in the amount of \$1,800.00.

The landlord seeks to have the security deposit off-set with the outstanding rent.

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.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.

...

I accept the undisputed evidence of the landlord that the tenants have failed to pay all rent owed as there is currently one month's rent due and owing. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$1,800.00.

I find that the landlord has established a total monetary claim of **\$1,900.00** 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 **\$900.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,000.00**.

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: November 26, 2018

Residential Tenancy Branch