



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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.

The landlords attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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’s agent testified the Application for Dispute Resolution and Notice of Hearing were served in person, on August 30, 2018.

I find that the tenant has been duly served in accordance with the Act.

The landlords 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.

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, 2017 and was to expire on June 30, 2018. Rent in the amount of \$4,500.00 was payable on the first of each month. The tenant paid a security deposit of \$2,250.00. The tenancy ended on August 28, 2018.

The landlords testified that the tenant was subleasing the rental unit and the sublease paid the tenant their rent for August 2018; however, the tenant did not pay the rent to the landlord. The landlord seeks to recover unpaid rent for August 2018, in the amount of \$4,500.00.

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.

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 landlords that the tenant accepted rent from their sublease and that money was not paid to the landlord. I find the tenant breached section 26 of the Act, when they failed to pay rent for August 2018, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for August 2018, in the amount of **\$4,500.00**.

I find that the landlord has established a total monetary claim of **\$4,600.00** 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 **\$2,250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,350.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is 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: December 21, 2018

Residential Tenancy Branch