



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.

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 monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on April 30, 2018. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenant paid a security deposit of \$575.00. The tenancy ended on October 30, 2018.

The landlord claims as follows:

a.	Unpaid rent for August 2018	\$ 800.00
b.	Unpaid rent for October 2018	\$1,150.00
c.	Filing fee	\$ 100.00

Total claimed	\$2,050.00
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The landlord testified that the tenant did not pay all rent for August 2018, and there was a balanced owed of \$800.00. The landlord stated that the tenant paid no rent for October 2018. The landlord seeks to recover unpaid rent in the amount of \$1,950.00.

The tenant testified that they think they paid half the rent for August 2018. The tenant stated that they were having financial difficulties at that time. The tenant stated that they withheld rent for October 2018, because there was a mould issue.

The landlord argued that the tenant paid rent both by cash or by interact. The landlord stated all payments have been recorded in the tenant's rent ledger. A copy of payments has been filed in evidence.

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 am satisfied that the tenant did not pay all rent for August 2018. I find the tenant breached section 26 of the Act and this caused losses to the landlord. I accept the landlord evidence that

the amount outstanding for rent was \$800.00, as this is supported by the landlord's rent ledger. Therefore, I find the landlord is entitled to recover unpaid rent for August 2018, in the amount of **\$800.00**.

The evidence of the tenant was that they withheld rent for October 2018, because of a mould issue. However, the tenant did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for October 2018, in the amount of **\$1,150.00**.

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$575.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,475.00**.

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: February 14, 2019

Residential Tenancy Branch