



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.

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 agreed that the tenancy began in August 2015. Current rent in the amount of \$2,600.00 was payable each month. The tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$250.00. The tenancy ended on or about February 10, 2019.

The parties agreed that there was a previous hearing on January 31, 2019. The hearing was convened as the tenant had filed an application to cancel a notice to end tenancy for unpaid rent.

The Arbitrator on January 31, 2019, determined that the tenant had failed to pay rent in the amount of \$9,100.00. The tenant’s application was dismissed and the landlord was granted an order of possession pursuant to section 55 of the Act. I have noted the file

number of this decision on the covering page of this decision. A copy of the January 31, 2019, was filed in evidence.

The landlord's agent testified that on January 31, 2019, the tenant was found to be in rent arrears of \$9,100.00. The agent stated that they were unable to obtain a monetary order, as the landlord had not filed an application for monetary compensation.

The landlord's agent testified that the tenant has made no payment towards the arrears and has failed to pay rent for February 2019. The landlord seeks to recover unpaid rent in the amount of \$11,700.00.

The tenant acknowledged that they were evicted for failure to pay rent in the amount of \$9,100.00. The tenant stated that they did not pay any rent for February 2019.

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.*

...

The Arbitrator at the hearing on January 31, 2019, determined that the tenant had failed to pay rent in the amount of \$9,100.00. That amount was not disputed at today's hearing (May 28, 2019). I find the tenant breached the Act, when they failed to pay rent

pursuant to section 26 of the Act. I find the landlord is entitled to recover unpaid rent up to and including January 31, 2019, in the amount of **\$9,100.00**.

Since the tenant was living in the rental unit in February, 2019, and did not pay rent. I find the landlord is entitled to recover unpaid rent for February 2019, in the amount of **\$2,600.00**.

I find that the landlord has established a total monetary claim of **\$11,800.00** 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 **\$1,050.00** and pet damage deposit of **\$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 **\$10,500.00**.

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 and pet damage 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: May 29, 2019

Residential Tenancy Branch