



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, 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, loss of rent, liquidated damages, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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.

Legal Counsel for the landlord indicated that the tenant MT was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 23, 2019 and successfully delivered on May 7, 2019. A Canada post tracking number and history was provided as evidence of service. I find that the tenant MT has been duly served in accordance with the Act.

Legal counsel for the landlord indicated that they were unable to serve the tenant EH. Since EH was not served, I find the hearing will proceed against MT.

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.

Issues to be Decided

Is the landlord entitled to a monetary order?

Background and Evidence

The parties entered into a fixed term tenancy which began on August 1, 2018 and was to expire on February 28, 2019. Rent in the amount of \$2,300.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00. The tenancy ended on October 10, 2018. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid rent for September 2018	\$2,300.00
b.	Prorated unpaid rent for October 2018	\$1,854.84
c.	Liquidated damages	\$1,050.00
d.	Shortfall of different of rent for November 2018 to February 28, 2019	\$ 800.00
e.	Skip tracker fee	\$ 326.65
f.	Filing fee	\$ 100.00
	Total claimed	\$6,431.49

Counsel submits the tenants failed to pay rent for September 2018 in the amount of \$2,300.00.

Counsel submits the tenants breached the fixed term agreement. Counsel stated the tenant MH vacated on October 2, 2018, and the tenant EH, vacated October 10, 2018. Counsel submits that the tenants did not notify the landlord that they were vacating the premise until they had already moved out.

Counsel submits the tenants did not pay rent for October 2018. Counsels submits as soon as the landlord found out that the tenants had vacated they made every effort to find a new renter and they were able to find a new renter starting October 25, 2018. Counsel submits the landlord seeks to recover unpaid rent for October 2018, in the prorated amount of \$1,854.84.

Counsel submits that the landlord is entitled to recover liquidate damages as shown in the tenancy agreement addendum, for the cost of re-renting the premise in the amount of \$1,000.00, plus GST for the amount of \$1,050.00.

Counsel submits that when the landlord entered in to a new tenancy agreement on October 25, 2018, with the new renter, the rent payable was \$2,100.00, which is \$200.00 less per month than the tenants' rent of \$2,300.00. Counsel submits the landlord is entitled to collection the difference between the two rents for the balance of the tenants fixed term agreement which was four months for a total of \$800.00. Filed in evidence is a copy of the new renter's tenancy agreement.

Counsel submits that the landlord had to pay to hire a skip tracer to locate the tenants. Counsel submits that the landlord would not have had to pay for this service had the tenants provided their forwarding address when it was requested by the landlord by text message and email. Filed in evidence is a copy of the receipt for the skip tracer.

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 that the tenants failed to pay rent for September 2018 and October 2018. I find the tenants breached the Act, when they failed to pay rent. I find the landlord is entitled to recover unpaid rent September 2018 and prorated rent for October 2018, in the total amount of **\$4,154.84**.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

I find the tenants breached the fixed term agreement when they vacated the premise on October 10, 2019, which is earlier than the date specified in the tenancy agreement. The tenancy agreement provides a clause that the landlord is entitled to liquidate damages for cost of re-renting the premises. Therefore, I find the landlord is entitled to recover liquidate damages in the amount of **\$1,050.00**.

In this case, the landlord re-rented the premises on October 25, 2018; the new renter's tenancy agreement required the new renter to pay \$2,100.00 per month. The tenants' rent under the fixed term agreement was \$2,300.00. I find the landlord is entitled to recover the difference between the two rents of \$200.00 for the balance of the fixed term of four months. Therefore, I find the landlord is entitled to recover loss rent in the amount of **\$800.00**.

The landlord had to hire a skip tracer to locate the tenants, only an address for the tenant MT was located. Since the tenants would not provide a forward address as required by the Act, I find it reasonable that the landlord would hire the service of a skip tracer. Therefore, I find the landlord is entitled to recover the cost for this service in the amount of **\$326.65**.

I find that the landlord has established a total monetary claim of **\$6,431.49** 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 **\$1,100.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,331.49**.

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: July 16, 2019

Residential Tenancy Branch