



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords 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.

This matter commenced by way of a Direct Request proceeding. The adjudicator determined that this matter should be adjourned to a participatory hearing scheduled on today’s date. The interim decision required the landlords to serve the tenant in accordance with the interim decision. The interim decision should be read in conjunction with this decision.

Only the landlords appeared.

Preliminary and Procedural matters

In this matter the landlords have named two tenants in their application. However, only NW signed the agreement. Although AW is listed in the tenancy agreement, they did not sign the agreement. Therefore, AW is an occupant under the Act. I have removed AW from the style of cause to remove AW.

The landlords have spelled the first name of the tenant incorrectly, as they left the last letter “e” of the tenant’s first name. I find an amendment to the tenants first name is appropriate in this matter and not prejudicial to either party. The style of cause has been amended to reflect the correct first name of the tenant.

As the tenant NW did not attend, service as set out in the interim decision was considered.

The landlords testified they complied with the interim decision and the documents were sent to NW by registered mail on August 16, 2019. A Canada post tracking number was provided as evidence of service. The landlords stated the package was returned unclaimed.

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 tenant NW has been duly served in accordance with the Act. Refusal or neglect to pickup the packages does not override the deemed provision of 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.

At the outset of the hearing the landlords stated that the tenant abandoned the rental unit on or about September 27, 2019. As the tenant vacated the premises, I find I do not need to consider the landlords' application for an order of possession.

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.

Issue to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on July 8, 2019. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00. The tenancy ended on or about September 27, 2019.

The landlords testified that the tenant did not pay all rent owed for July 2019, and there was a balance owing of \$350.00. The landlords stated the tenant did not pay subsequent rent for August (\$750.00) and September (\$750.00) 2019. The landlords seek to recover unpaid rent in the amount of \$1,850.00.

The landlords request the security deposit be offset from the unpaid 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 landlords have 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 failed to pay all rent for July 2019 and no rent for August and September 2019. I find the tenant has breached section 26 of the Act, and the landlords suffered a loss. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$1,850.00**.

I find that the landlords have established a total monetary claim of **\$1,950.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$375.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,575.00**.

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 landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: October 07, 2019

Residential Tenancy Branch