



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, MNR, MNS, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid.

The landlord appeared. The tenants did not attend the hearing.

The landlord gave 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.

Landlord's application

The landlord's 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 the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 26, 2019, Canada post tracking numbers were provided as evidence of service.

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 tenants have been duly served in accordance with the Act.

At the outset of the hearing the landlord indicated that the tenants have vacated the property and they no longer require an order of possession.

I have amended the style of cause to reflect the full name of the male tenant. I find this not prejudicial to either party.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began on September 1, 2019. Rent in the amount of \$1,400.00 was payable on the first of each month. The landlord stated a security deposit and pet damage was to be paid; however, they only received a total amount of \$680.00.

The landlord testified that rent was due on the first of each month; however, the tenants gave them a postdated cheque for September 16, 2019, which went unnoticed and they deposited the cheque on September 1, 2019 and the cheque was returned for insufficient funds. The landlord stated that the tenants did not issue a new cheque and they did not pay any subsequent rent.

The landlord testified that the tenants did not give any notice that they would be vacating the premises. The landlord stated that the tenants had abandon the rental unit and when they reviewed the security footage it showed they had vacated on October 31, 2019.

The landlord testified that they seek to recover unpaid rent for September, October and November 2019, as they had no ability to attempt to re-rent the rental premises for November 2019 and it was left unrentable.

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 evidence of the landlord that the tenants failed to pay rent for September, and October 2019. I find the tenants breached the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for September and October 2019, in the amount of **\$2,800.00**.

I further accept the evidence of the landlord that the tenants abandon the rental unit without notice to the landlord and this cause the landlord loss of subsequent rent. Therefore, I find the landlord is entitled to recover loss of rent for November 2019, in the amount of **\$1,400.00**.

I find that the landlord has established a total monetary claim of **\$4,300.00** 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 **\$680.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,520.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenant's application is dismissed. 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: November 28, 2019

Residential Tenancy Branch