



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

The landlord's application is seeking orders as follows:

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

The tenants' application is seeking orders as follows:

1. To have the landlord comply with the Act;
2. To suspend or set conditions on the landlord's right to enter the rental unit;
3. For a monetary compensation for monetary loss; and
4. To authorize the change of locks to the rental unit.

Only the landlord appeared.

Tenants' application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for twenty minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the Tenants did not attend the hearing by 11:20 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

Landlord's application

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 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 by email on April 20, 2020. I find that the tenants have been duly served in accordance with the Act.

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.

At the outset of the hearing the landlord stated that they filed an application for dispute resolution to end the tenancy earlier and obtain an order of possession. The landlord stated that the Residential Tenancy Branch refused to accept their application based on inadequate evidence. While this is concerning to me, I find it is not an issue for me to determine. If the landlord's application was wrongfully not accepted by the RTB, they should speak to a supervisor or write a letter to the Director.

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 tenancy began on December 1, 2019. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$200.00.

The landlord testified that they do not believe the Act applies to this matter as this was to be a short time rental and is used as a vacation rent in the summer months. However, they were told that they had to have this issue determined.

The landlord testified that the tenants have failed to pay \$600.00 for March 2020 rent and has paid no rent for April and May 2020. The landlord seeks to recover unpaid rent in the amount of \$3,800.00.

The landlord testified that the tenants have caused significant damage to the rental. The landlord stated that they have not been allowed access to the premise to determine the actual cost.

The landlord testified that the tenants do not have exclusive possession of the rental property and that they only rent the premise that is over the garage. The landlord stated they have their own property in the garage and there is also have a secondary living space. The landlord stated that they have allowed the tenants to store some items in the garage; however, this was as a courtesy and not part of their tenancy.

The landlord stated that they have been threatened with violence by the tenants should they attended the property to access their personal property.

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.

The Residential Tenancy Policy Guideline 27 states the following,

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet

rented for a fixed term of 6 months, the RTA applies. I find this would also apply to a month to month agreement.

In this case, I am not satisfied that the purpose the tenants were renting was for a vacation or travel accommodation. This appears to be the tenants' primary residence and they have resided in the premise since December 2019. Therefore, I find the Act applies to this matter.

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 undisputed testimony of the landlord that the tenants did not pay all rent owed for March of \$600.00 and paid no rent for April and May 2020. I find the tenants breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,800.00**.

Although I have granted the landlord a monetary for unpaid rent. I find the landlord is entitled to exercise their rights under the Act to issue a notice to end tenancy for unpaid rent pursuant to section 46 of the Act. This may be affected by the current **Ministerial Order M089 issued March 30, 2020**.

The landlord is claiming damages to the property, I find this portion of the landlord's claim premature as they have not had full access to the rental unit to determine the actual cost of damage. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

I find it appropriate under section 62 of the Act to make the following orders.

I order the tenants or any guests of the tenants that they must cease making any threats to the landlord or any of the landlords' guests.

I order the tenants that they **cannot deny** the landlord access to the property at any time. The tenants do not have exclusive right to the property.

The landlord has their personal items stored and there is a second living space in the garage. This is not the tenant's rental unit or rented under their agreement. While I accept the landlord has given permission the tenants permission to store some items; however, this permission can be revoked at any time as it was not provided as a term of their tenancy agreement. And even if it was, this was not for their exclusive use.

Should the tenants threaten the landlord or the landlord's guest in away, or interfere with access to the garage, I find the landlord is entitled to end the tenancy for cause, pursuant to section 47 of the Act, for failing to comply with a Directors order.

I find that the landlord has established a total monetary claim of **\$3,900.00** comprised of the above described amount and the \$100.00 fee paid for this application.

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.

Further, I find if the above monetary order remains unpaid at the end of the tenancy. The landlord is entitled to retain the security deposit and pet damage deposit in accordance with section 38(3) of the Act.

Conclusion

The tenants' application is dismissed without leave to reapply. The landlord is granted a monetary order. The tenant must comply with the above orders or put their tenancy at risk.

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 08, 2020

Residential Tenancy Branch