



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MND MNR MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were given an opportunity to provide affirmed testimony, to present evidence and make submissions.

Preliminary Issue: Particulars of the application and late evidence of Applicant

Pursuant to paragraph 59(2)(b) of the Act, an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Additionally, Rule 2.5 of the Residential Tenancy Branch (the "Branch") Rules of Procedure (the "Rules"), requires that to the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

As per Rule 3.17, evidence not provided in accordance with Rule 2.5 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

As per Rule 3.14, at a minimum, evidence that meets the criteria of being new and relevant and that was not available at the time the application was made must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

At the outset of the hearing, the tenants advised that they did not receive any evidence from the landlord in support of the claim for damages, including a detailed breakdown of the specific claim for damages, until 5 days before the hearing. The tenants submit they did not have sufficient opportunity to respond to the landlord's claim not did they even know what exactly the claim was for.

The landlord stated the evidence including details of the claim for damages was provided to the respondent late due to Covid-19 and because she did not have her dispute access code.

The landlord's application identified she was seeking monetary compensation for unpaid rent in the amount of \$2500.00, loss of rent of \$2500.00 plus compensation for damage of \$2500.00. The landlord did not submit a breakdown of the claim for damages until 5 days prior to the hearing nor provide the tenants with any evidence in support of this part of the claim until 5 days before the hearing. I reject the landlord's argument that the late submissions were due to the Covid-19 pandemic or because she didn't have the dispute access code. The landlord could have submitted a copy of her evidence and details of the claim to the tenants by e-mail and without the need for an access code which the landlord should have had in either event. I find the landlord severely prejudiced the tenants' ability to respond to this aspect of the dispute in any meaningful manner; therefore, the portion of the landlord's application relating to damages in the amount of \$2500.00 is dismissed without leave to reapply.

I find the tenants had adequate knowledge of the landlord's claim for unpaid rent and/or loss of rent; therefore, the hearing proceeded on these parts of the application.

Issues

Is the landlord entitled to a monetary award for unpaid rent and compensation for loss?

Background and Evidence

The tenancy began on October 19, 2019 with a monthly rent of \$2500.00 payable on the 1st day of each month. The tenant paid a security deposit of \$2500.00 at the start of the tenancy which the landlord continues to retain. The tenancy ended on April 30, 2020.

The landlord' is claiming unpaid rent in the amount of \$2500.00 for the month of April 2020. The landlord testified the tenants did not pay this amount but instead requested the landlord use their security deposit to offset the rent. The landlord stated she did not agree to use the security deposit.

The landlord is also claiming \$2500.00 as "loss of rent" for April 2020 which appears to be a duplicate of the claim above.

The tenants testified they notified the landlord on March 31, 2020 that they were not able to pay the rent for April 2020 and requested the landlord to retain the security deposit in lieu. The tenants state the landlord had illegally collected double the security amount at the start of the tenancy.

Analysis

Section 26 of the Act requires that 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 landlord's uncontested evidence and find that the tenant were obligated to pay monthly rent in the amount of \$2500.00 but failed to pay rent for the month of April 2020. The landlord is awarded \$2500.00.

The landlord claim for loss of rent is for the same period as above therefore it is a duplicate claim and hereby dismissed without leave to reapply.

The landlord continues to hold a security deposit of \$2500.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in full satisfaction of the monetary award.

Conclusion

The landlord may apply the \$2500.00 security deposit to the award of \$2500.00 for unpaid April 2020 rent.

The remainder of the landlord's application is dismissed without leave to reapply.

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: June 02, 2020

Residential Tenancy Branch