



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed 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.

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.

Preliminary matters

At the outset of the hearing the parties agreed the tenant vacated the premise and an order of possession is not required.

In this case, the tenant had filed evidence; however, it is not relevant to the issue of unpaid rent. The tenant indicated that they were seeking compensation; however, the tenant was informed that because they have not filed their own application for dispute resolution, I cannot consider any such claim. Only the issues properly before me will be considered.

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2019. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenant paid a security deposit of \$1,500.00.

The parties agreed on the following facts:

- Rent paid for April 2020 was the total amount of \$1,500.00; and
- Rent paid for May 2020, was the amount of \$500.00.

The landlord testified that no rent for June 2020 was received. The landlord stated that the tenant overheld the premise until June 7, 2020, they are seeking to recover prorated rent for June 2020 in the amount of \$750.00.

The tenant testified that they believe they left the rental unit on June 2, 2020 and notified the landlord. The tenant stated that they could not provide a copy of the text messages as their phone had broken.

The landlord argued that they received a text message on May 20, 2020 that they would be out by June 7, 2020. The landlord stated there is no text message indicating they have vacated earlier. The landlord reviewed their text messages at the hearing.

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. In this case, both parties have the burden of proof to prove their respective 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 both parties that all rent for April and May 2020 was not paid. The total rent due was \$6,000.00 and \$2,500.00 was paid. This left a balance owed for unpaid rent for the above said months in the amount of \$3,500.00. I find the tenant breached the Act, and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent for April and May 2020, in the amount of **\$3,500.00**.

In this case, the tenant did not vacate the unit on the date agreed upon in the mutual agreement to end the tenancy. On May 20, 2020 the landlord received a text message from the tenant stated they would be out by June 7, 2020. The tenant did not deny this message was sent. The evidence of the tenant was that they sent another text message to the landlord informing they had left on June 2, 2020. The landlord denied they received that message.

I accept the evidence of both parties that the tenant informed the landlord that they would vacate the rental unit on June 7, 2020. Although the tenant stated they left earlier, I find the tenant has failed to prove that they notified the landlord and that it was received. I find the tenant breached the Act, when they failed to vacate the rental unit, and this caused losses to the landlord. I find the landlord is entitled to recover a prorated rent for June 2020, in the amount of **\$750.00**.

I find that the landlord has established a total monetary claim of **\$4,350.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,500.00** in full satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,850.00**.

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 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: June 12, 2020

Residential Tenancy Branch