



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, and to recover the cost of the filing fee.

Both parties appeared, 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.

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

GZ attended as agent for the tenant. GZ stated they are the husband of the tenant who is currently away visiting family. In most case when an agent appears without a letter authorizing them to appear on the tenant’s behalf, I would not allow them to attend the hearing; however, the landlord was not objecting to GZ appearing as the tenant’s agent.

At the outset of the hearing the tenant’s agent stated that they do not recognize the named landlord in the application as their tenancy agreement is with WZ. WZ stated the named landlord is the application is his wife and she also has interest in the property.

Since WZ is present and is the landlord named in the tenancy agreement, I find it appropriate to amend the landlord’s application to included WZ. Further, as XZ has ownership in the property they are entitled under the Act to make the application.

As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlords’ application is amended to include a claim for unpaid rent June 2020.

Issue to be Decided

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

Background and Evidence

The parties agreed the tenancy began on July 1, 2019. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenant paid a security deposit of \$1,250.00. The tenant is currently living in the rental premise.

The landlords' agent testified that the tenant only paid \$500.00 towards April 2020 rent and \$500.00 both for May and June 2020 rent (\$1,500.00). The agent stated that the tenant currently is rent arrears of \$6,000.00.

The tenant's agent acknowledged they have only paid the above amounts.

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 undisputed evidence of the parties that the tenant has failed to pay rent in accordance with section 26 of the Act and this caused losses to the landlords. I find the tenant has breached the Act. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$6,000.00**.

I find that the landlords have established a total monetary claim of **\$6,100.00** 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 **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I further find the above Order does not interfere with the landlords' lawful right to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, when the **Ministerial Order M089 is removed**. Should the tenant be served with a notice to end tenancy for unpaid rent, they have five (5) days to pay the rent outstanding as shown above and any subsequent rent.

As the tenancy has not ended, I have not offset the above monetary Order with the tenant's security deposit. Under section 38(3) of the Act states if the monetary order remains unpaid at the end of the tenancy the landlords are entitled to keep it.

I suggest to the tenant if they want to continue their tenancy, they should present a reasonable repayment schedule of the above Order to the landlords. This may include providing the landlords with sufficient details, such as income from all occupants of the household, bank statement or whatever is necessary for the landlords to consider. I have no authority under the Act to make a payment schedule for unpaid rent.

Conclusion

The landlords are granted a monetary order in the above noted amount.

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 22, 2020

Residential Tenancy Branch