



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MND, FF

Introduction

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

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 each respondent 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 on June 25, 2020. The landlord stated those packages were received by the tenants, as they were found in the rental unit opened.

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.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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 landlord requested to amend their application to include loss of rent for July 2020. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for loss of July 2020 rent.

At the outset of the hearing the landlord stated that on July 3, 2020, they found the rental unit abandon and the tenants left garbage and damage behind.

As the landlords now have the rental unit in their possession, I find it not necessary to grant an order of possession.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and utilities?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on December 30, 2019. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. The tenancy ended on July 3, 2020.

The landlord testified that the tenants did not pay all rent for May 2020, and there was a balancing owing of \$600.00. The landlord stated that the tenants did not pay any rent for June 2020.

The landlord testified that they should be entitled to recover July 2020, as the tenants were in possession of the property when rent was due and owing. The landlord stated that it was on July 3, 2020, that they discovered the rental unit was abandon and that the they were still communicating with the tenants on July 7, 2020 as they said they would return the keys, clean the rental unit and fixed the damage. The landlord stated the keys were never returned nor was the rental unit cleaned or the damage repaired.

The landlord testified that the utilities were not included in the rent. The landlord stated that the tenants did no pay the outstanding utilities of water, hydro and gas. The landlord seeks to recover unpaid utilities up to May 2020, in the amount of \$1,445.00.

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 landlords have 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 testimony of the landlord that the tenants did not pay all rent for May 2020 and no rent for June 2020, was paid. I further accept the undisputed testimony of the landlord that they found the rental unit abandon on July 3, 2020, the keys were not returned, and the unit was left dirty and damaged. I find the tenants breached section 26 of the Act, and the landlords suffered a loss. Therefore, I find the landlords are entitled to recover unpaid rent for May, June 2020 and loss of rent for July 2020 in the amount of **\$4,200.00**.

I accept the undisputed testimony of the landlord that the tenants did not pay the cost of utilities. These were not included in the rent. I find the tenants breach the tenancy agreement and the landlords suffered a loss. Therefore, I find the landlords are entitled to recover the utilities up to May 2020 in the amount of **\$1,445.00**.

I find the landlords have established a total monetary claim of \$5,745.00 comprised of the above described amounts and the \$100.00 cost of filing their application.

I order that the landlords retain the security deposit of **\$900.00** and pet damage deposit of \$900.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$3,945.00**.

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 tenant.

Conclusion

The landlords are granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are 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: July 20, 2020

Residential Tenancy Branch