



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNSD, MNR, MNDC, 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 and for compensation for loss, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of 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 August 19, 2020 and were successfully delivered to the tenants on August 21, 2020. Canada post tracking numbers were provided as evidence of service. I have noted the tracking numbers on the covering page of this decision.

Based on the above, I find that the tenants were served on August 21, 2020, 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 issue

In this case the landlord obtained an order of possession at a previous hearing held in August 2020, and the tenants vacated the premise on August 20, 2020. Therefore, I find it not necessary to consider the landlord's application for an order of possession.

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 March 1, 2020. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00. The tenancy ended on August 20, 2020.

The landlord testified that the tenants failed to pay rent for April, May, June, July and August 2020. The landlord stated that they did receive \$2,000.00 on June 10, 2020 and that was applied towards the outstanding rent. The landlord stated that the balance owed for unpaid rent is the amount of \$3,000.00.

The landlord testified that they should be entitled to rent for September 2020, as it was the tenants that breached of the Act, which ended the tenancy and because the tenants did not vacate until August 20, 2020, and there were damages they were not able to find a new renter for September 1, 2020. The landlord seeks to recover loss of rent for September 2020, in the amount of \$1,000.00.

The landlord testified that the rental premises is located on a cranberry farm and there was also one campground site located on the lake. The landlord stated that these were not for the tenants use and access is given by a shared roadway. The landlord stated that because the tenants had barricaded the road and the male tenant was aggressive, threatening and carry around an axe, they could not rent the campground site. The landlord stated that the site was very desirable because of its location and it was expected to be fully rented due to the travel restriction regarding the state of emergency. The landlord stated that they were unable to rent the site from May 25 to August 20, 2020, due to the behavior of the male tenant. The landlord seek to recover

the loss in the amount of \$4,515.00. Filed in evidence are photographs of the roadway blocked and the male tenant carrying an axe.

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 landlord that the tenants had failed to pay for April, May, June, July and August 2020. I accept the evidence of the landlord that they received on June 10, 2020, the amount of \$2,000.00, from the tenants that was applied to the outstanding rent. I find the tenants have breached the Act when they did not pay rent, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,000.00**.

I am further satisfied that the landlord suffered a loss of rent for September 2020. The tenants were evicted from the premises do to a breach of the Act. The tenants did not

vacate the premise until August 2020, this did not give the landlord reasonable time to re-rent the premise. The landlord is entitled to be in the same position as if the tenants had not breach the Act. Therefore, I find the landlord is entitled to recover loss of rent for September 2020, in the amount of **\$1,000.00**.

I am further satisfied and based on the undisputed evidence of the landlord that the tenants interfered with the landlord's ability to rent the campsite that shared a common roadway, due to the tenants barricading the shared roadway and male tenant behavior with an axe. I accept that the campsite was likely more desirable to the local community due to the travel restrictions outside the province. Therefore, I grant the landlord loss of revenue for the campsite in the amount of **\$4,515.00**.

I find that the landlord has established a total monetary claim of **\$8,615.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$500.00** and pet damage deposit of **\$500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$7,615.00**.

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 tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage 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: October 01, 2020

Residential Tenancy Branch