



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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 a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of 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.

The tenant’s confirmed that they received the landlord’s evidence; however, it was not received until just before the hearing. The tenant’s confirmed they did not serve the landlord with their evidence. As neither party served their evidence in accordance with the Residential Tenancy Branch Rules of Procedure. I have excluded the evidence of both parties.

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 4, 2018. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on or about June 30, 2020.

The landlord testified that the tenants did not pay any rent for June 2020, and they said that they did not have to pay the rent because of the pandemic.

The tenants testified that they did not pay rent for June 2020, because the landlord told them that they would be moving in to the premise on July 1, 2020. The tenants stated that they contacted the RTB and they were informed that the landlord could not end the tenancy at the time because of the pandemic. The tenants confirmed they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the Act.

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.*

...

Both parties agreed rent for June 2020, was not paid by the tenants. Both parties provided a different version of events. The tenants argue that they did not have to pay the rent because the landlord was going to move into the premise.

Even, If I accept the testimony of the tenants, which I do not as they have provided no documentary evidence to support their version. The tenants were fully aware that the landlord could not end the tenancy at the time do to the current state of emergency. The tenants did not receive any notice to end the tenancy from the landlord as required by the Act. Therefore, the tenants were not required to move from the premise and not entitled to withhold the rent for June 2020.

Based on the above, I find the tenants breached section 26 when they failed to pay the rent. Therefore, I find the landlord is entitled to recover unpaid rent for June 2020, in the amount of **\$2,000.00**.

I find that the landlord has established a total monetary claim of **\$2,100.00** 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 **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,100.00**.

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 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 13, 2020

Residential Tenancy Branch