



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for an order to retain the security deposit and pet 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 the respondents 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 by registered mail on July 6, 2020. The landlord stated that tenants were also give a second copy, in person. 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 unpaid rent for August 2020. 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 for August 2020.

Issues to be Decided

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

Are the landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on December 1, 2019. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$375.00.

The landlord testified that there was a previous hearing, which dealt with unpaid rent up to and including June 2020. The landlord stated they were granted a monetary order and an order to retain the security deposit.

The landlord testified that the tenants have failed to pay rent for July 2020, and August 2020. The landlord stated that they did receive on behalf of the tenants, the amount of \$300.00 for each of these months as part of the rent subsidy program due to the state of emergency. The landlord seeks to obtain a monetary order for the balance due in the amount of \$2,400.00.

Filed in evidence are emails from the tenant showing rent for July 2020 would not be paid.

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 evidence of the landlord that the tenants have failed to pay all rent owed for July and August 2020. I accept the only rent received was a subsidy of \$300.00 for each of these months leaving a balance due of \$2,400.00. I find the tenants have breached section 26 of the Act when they failed to pay rent, and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent for July and August 2020, in the amount of **\$2,400.00**

I find the landlords have established a monetary claim of **\$2,500.00**, comprised of the above amount and the \$100.00 they paid to file their application.

As this tenancy is still ongoing, and this was affected rent during the state of emergency, I find the above amount of \$2,400.00, must be repaid in accordance with a repayment plan as set out in the Residential Tenancy Regulations. This re-payment plan is only effective while the tenancy continues.

Should the tenancy end the full amount, less any payments made, is due forthwith. 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.

I further order that the landlord is entitled to keep \$100.00 from the pet damage deposit to recover the cost of the filing fee. This leaves a balance of the pet damage deposit at \$275.00.

I further order that if any of the above monetary order remains unpaid at the end of the tenancy, I authorize the landlord to keep the remainder of the pet damage deposit, pursuant to section 38(3) of the Act and section 62 of the Act. Since the tenants did not attend to oppose this application.

The tenants should be aware that as of August 17, 2020, the ministerial order has ended and all rent due after this time must be paid in accordance with their tenancy agreement and if they have received the repayment plan, those arrears payments must also be paid in addition to the monthly rent commencing October 1, 2020. Failure to pay rent and rent arrears could result in ending the tenancy, pursuant to section 46 of the Act.

Conclusion

The landlords are granted a monetary order and may keep a portion of 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: October 28, 2020

Residential Tenancy Branch