



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FFL

Introduction

On June 15, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; and to keep the security deposit.

The hearing scheduled for October 27, 2020 had to be rescheduled by the Residential Tenancy Branch. The hearing was rescheduled for November 5, 2020, and the Landlord was provided with a new Notice of Dispute Resolution Proceeding for service on the Tenant.

The Landlord and Tenant attended the hearing. The Landlord was assisted by his agent.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The Landlord's documentary evidence was confirmed received by the Tenant. The parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Can the Landlord keep the security deposit towards the claims?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on November 1, 2018, as a fixed term tenancy that was extended until February 29, 2020. Rent in the amount of \$2,400.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,200.00. The Landlord provided a copy of the tenancy agreements. The tenancy ended on February 29, 2020.

The Landlord was living out of the country during the tenancy.

Unpaid Rent

The Landlord testified that the Tenant failed to pay all the rent owing under the tenancy agreement. The Landlord testified that the Tenant would only make partial payments of the rent owing under the tenancy agreement.

The Landlord testified that the Tenant promised the Landlord that he would pay the rent arrears when he was able; however, he never paid the full amount of rent owing.

The Landlord testified that over a 16-month period of time the rent due to be paid under the tenancy agreement is \$38,400.00. The Landlord submitted that the Tenant only paid him \$16,950.00 during the 16-month period. The Landlord is seeking a monetary order of \$21,450.00. The Landlord wants to apply the security deposit of \$1,200.00 to the unpaid rent for a balance owing of \$20,250.00.

In reply, the Tenant testified that he lost his job and did not have money to pay the rent. He testified that he asked the Landlord if he could rent out rooms in the house and the Landlord refused. The Tenant testified that the Landlord told him to pay the rent when he was able. The Tenant testified that he is on a disability income and does not have the ability to pay. The Tenant stated that he should not have to pay because the Landlord needed someone to be a caretaker of the house while he was out of country.

Unpaid Utility Bills

The Landlord testified that the Tenant failed to pay a city utility bill and owes the Landlord the amount of \$1,151.00. The Landlord testified that tenancy agreement provides that rent does not include water and sewer costs. The Landlord testified that since he was out of town the Tenant was responsible to make the utility payments online using the Landlord's account.

In reply, the Tenant testified that he was never made aware that he was responsible to pay water and sewer costs and that the Landlord never provided him with a pass code for making these payments. He testified that utility bills arrived in the Landlord's name and the Tenant never made a utility payment.

Other Compensation

The Landlord is seeking compensation for lost personal property that was stored in the rental home. The Landlord's application does not contain a monetary claim amount; however, the Landlord provided a list of 10 items that he is seeking compensation in the amount of \$3,900.00.

The Landlord testified that he was storing some of his personal items in the rental property while he was out of country for two years. The Landlord stated that his possessions were in the basement and that the Tenant had access to the items.

The Landlord did not provide any photographic evidence showing the items and did not provide any receipts for the purchase of any of the items. The Landlord did not provide a quote showing the replacement cost of any of the items. The Landlord testified that the items ranged between 1 to 5 years old at the start of the tenancy.

In reply, the Tenant testified that he never went into any of the Landlord's items and he never stole any of the Landlord's possessions. The Tenant stated that the Landlord never had him sign any kind of manifest for the items. The Tenant stated that the unit was rented to a different Tenant prior to this tenancy.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the Act provides that 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.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities I make the following findings:

Unpaid Rent

I evidence from the parties is in agreement that the Tenant was required under the tenancy agreement to pay rent of \$2,400.00 each month to the Landlord. I accept that the parties discussed the Tenant's inability to pay the full rent when it was due and that the Tenant was told to pay the rent arrears when he was able. I find that this agreement does not excuse the Tenant from having to pay the rent that is due and I also find that there is insufficient evidence that the parties entered into an agreement that the Tenant would be excused from paying rent because he acted in a care-taking position for the rental property while the Landlord was away.

The Tenant acknowledged that he lost his job and did not have the ability to pay. The Tenant did not refute the amount of rent owing to the Landlord. I find that the Tenant owes the Landlord the amount claimed of \$20,250.00 for rent arrears.

I grant the Landlord a monetary order in the amount of \$20,250.00.

Unpaid Utility Bills

I have reviewed the tenancy agreements provided by the Landlord. I find that the agreement provides that water and sewage disposal are not included in the rent. I find that the Tenant signed the tenancy agreement agreeing to be responsible for paying the cost for water and sewer.

The Landlord provide an electronic copy of a utility bill that was unable to be viewed. A notification appeared saying the file the file was damaged or is an unsupported file type. I am unable to confirm that the amount of the utility costs.

I accept the Tenant's testimony that he did not make any utility payments for water or sewage. However, since I have insufficient evidence from the Landlord to prove the value of the Landlords loss, I am unable to award the Landlord compensation he seeks.

Since the value of loss is not proven by the Landlord but the Tenant is found to have breached the agreement by failing to pay utility costs, I award the Landlord a nominal award of \$200.00 for utilities.

Loss of Property

I find that the Landlord has provided insufficient evidence to establish the presence of personal property; that a loss of personal property exists and insufficient evidence of the actual amount of loss the Landlord suffered. The Landlord provided insufficient documentary evidence to support his claims. There are no photographs, receipts, quotes, provided. The Landlord did not actually see who took his possessions and the Tenant never signed a manifest accepting responsibility for any of the Landlord's items.

The Landlord's claim for \$3,900.00 is dismissed without leave to reapply.

Security Deposit

I authorize the Landlord to keep the security deposit of \$1,200.00 in partial satisfaction of the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$20,550.00 comprised of \$20,250.00 for unpaid rent; \$200.00 for utility costs; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1,200.00 towards the award of \$20,550.00, I find that the Landlord is entitled to a monetary order in the amount of \$19,350.00. This monetary 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.

Conclusion

The Tenant failed to pay the rent and utilities owing under the tenancy agreement. The Tenant owes the Landlord \$20,550 in unpaid rent and utilities. I order that the Landlord can keep the security deposit of \$1,200.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order for the balance of \$19,350.00.

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: November 18, 2020

Residential Tenancy Branch