



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, 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, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant 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 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 October 1, 2020, a Canada post tracking number was provided as evidence of service. The landlord stated that the package was successfully delivered to the tenant on October 5, 2020. I have noted the Canada post tracking number on the covering page of this decision.

I find that the tenant was duly served on October 5, 2020.

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.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on May 1, 2018. Rent in the amount of \$1,204.00 was payable on the first of each month. The tenant paid a security deposit of \$587.50. The tenancy ended on August 31, 2020.

The landlord stated that they returned the security deposit at the end of the tenancy only because they thought the rent for August 2020, would be subject to a repayment plan set out by the RTB; however, they did not realize at the time that this was intended only for ongoing tenancies.

The landlord testified that on July 10, 2020 the tenant was given notice that the landlord was listing the property for sale. The landlord stated that the tenant responded to their email that they were planning on moving soon anyways and attached to the email was their notice to end tenancy effective August 31, 2020.

The landlord testified that the tenant's paid August 2020, rent, by cheque which was returned due to insufficient funds. The landlord stated that the tenant acknowledged the NSF and indicated they would pay the rent on August 15th, 2020.

The landlord testified that the tenant did not pay the August 2020, rent. The landlord stated that the tenant later said they did not have to pay the rent because the premise sold. The landlord stated that it was the tenants who gave notice to end the tenancy, not the landlord. The landlord seeks to recover unpaid rent for August 2020, in the amount of \$1,204.00.

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 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

***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.*

In this case, the tenant did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property, the tenant only received notification that the property was being listed for sale. It was the tenant's personal choice when they decided to give notice to end their tenancy. I find the tenancy was legally ended by the tenant. Filed in evidence are emails between the parties

I accept the undisputed testimony of the landlord that the tenant's rent cheque for August 2020, was returned NSF and the tenant promised to pay that rent by August 15, 2020. This is supported by the emails and a copy of the NSF cheque.

I find the tenant breached section 26 of the Act, when they failed to pay the rent, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for August 2020, in the amount of **\$1,204.00**.

I find that the landlord has established a total monetary claim of **\$1,304.00** comprised of the above described amount and the \$100.00 fee paid for this application.

This 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 landlord is granted a monetary order

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: January 18, 2021

Residential Tenancy Branch