



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, to recover liquidated damages, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord's agent 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's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 30, 2020, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and other money owed?
Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of their claim?

Background and Evidence

The tenancy parties entered into a fix term tenancy that began on July 1, 2019 and was to expire on June 30, 2020. The parties entered into a subsequent fixed term tenancy which was to expire on June 30, 2021. Rent in the amount of \$3,000.00 was payable

on the first of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00 were paid by the tenant.

The landlord's agent testified that the tenant did not pay all rent owed for July 2020, leaving a balance of unpaid rent for July in the amount of \$1,900.00. The landlord stated the tenant failed to pay rent for August 2020, in the amount of \$3,000.00.

The landlord's agent testified that the tenant did not fulfill their obligation under the fixed term tenancy agreement as they gave notice to end the tenancy on August 31, 2020. The agent stated that are entitled to recover the cost of liquidate damages in the amount of \$1,500.00, as shown in the tenancy agreement, which was the pre-estimated cost of re-renting the rental unit.

The landlord's agent testified that the tenant agreed to certain deduction from the security deposit and pet damage deposit; however, there is still an outstanding amount owed in the amount of \$4,536.66..

Filed in evidence is an email thread dated September 10, 2020, which the tenant acknowledge the charges for cleaning, carpet cleaning, rubbish removal, unpaid utilities, unpaid rent, late fees, liquidated damages. The tenant also gave the landlord permission to apply the deposits to the amount owed. This leaving a balance owed of \$4,536.66.

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.*

...

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

I find the tenant breached section 26 and of the Act, when they failed to pay all rent owed for July and August 2020. I further find the tenant breached section 45(2) of the Act, when they ended the fixed term tenancy earlier than the Act allowed and due to these breaches caused losses to the landlord.

I accept the undisputed evidence of the landlord's agent that they were given permission to retain the deposits of \$3,000.00. This amount was applied to the cost of cleaning, carpet cleaning, rubbish removal, unpaid utilities, unpaid rent, liquidate damages and late fees. The email thread shows that after these deductions were made from the deposits and there was still a balance owing of \$4,536.66. This amount was acknowledged by the tenant. Therefore, I find the landlord is entitled to recover the balance due of **\$4,536.66**.

I find that the landlord has established a total monetary claim of **\$4,636.66** 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 15, 2021

Residential Tenancy Branch