



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, 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, loss, and other money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Only the landlords appeared.

Preliminary and Procedures

In this case, the landlords have provided a signed tenancy agreement. Although the tenancy agreement show KB and LB as tenants, only KB signed the agreement. As LB did not sign the agreement, I find LB is not a tenant under the Act. I have removed LB from the style of cause.

As the tenant KB 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 landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 23, 2020. And again, the tenant was served in person on October 31, 2020, which was witnessed by the bailiffs.

Based on the above, I find the tenant was served in person on October 31, 2020, in accordance with the Act.

The landlords 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

Are the landlords entitled to a monetary order for unpaid rent and loss of rent and other money owed?

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

Background and Evidence

The parties entered into a fixed term tenancy which began on May 1, 2019 and was to expire on April 31, 2020. At the end of the fixed term the tenancy continued on a month-to-month agreement. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenant paid a security deposit of \$1,500.00.

The landlords testified that they were at a prior hearing that commenced on August 25 and continued on October 2, 2020 and they were granted a two day order of possession for cause. The landlords stated that the tenant failed to vacate the premise and they had to file for a writ of possession in Supreme Court and pay a fee of \$120.00. The landlords seek to recover the cost of the writ of possession in the amount of \$120.00. I have noted the prior hearing file number on the covering page of this decision.

The landlords testified that the bailiffs had to attend the premise to remove the tenant on October 31, 2020. The landlords stated that they had to pay bailiff fees and seek to recover the cost in the amount of \$3,470.56. Filed in evidence is a copy of the bailiff invoice.

The landlords testified that the tenant paid no rent from March 2020 to October 2020, eight months. The landlords seek to recover unpaid rent for a total amount of \$24,000.00.

The landlords testified that because the tenant failed to comply with the order of possession, and they had to hire the bailiff, they had no idea when the bailiffs would attend to remove the tenant. As a result, they could not even start to advertise for a new tenant. The landlords stated because of the action of the tenant and the condition of the rental unit they were unable to find a new renter for November 2020. The landlords seek to recover loss of rent for November 2020, in the amount of \$3,000.00.

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 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.

Although, I note the landlords are claiming the cost of registered mail, in their monetary work sheet, service fees are not recoverable under the Act.

I accept the evidence of the landlords that the tenant failed to comply with the order of possession, issued on October 2, 2020, and the landlords had to obtain a writ of possession in Supreme Court. The tenant was removed by the bailiffs on October 31, 2020. I find the tenant breached section 55 of the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the writ of possession fee and the bailiff fees in the amount of **\$3,590.56**.

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 evidence of the landlords that the tenant failed to pay rent for eight months, from March 2020 to October 2020. I find the tenant breached section 26 of the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent for the said months in the amount of **\$24,00.00**.

I am also satisfied that the landlords were unable to find a new renter for November 1, 2020, as the tenant failed to vacate the premise based on the order of possession. The landlords had no choice but to wait for the bailiff to attend and remove the tenant before they could take any steps to find a new renter. I find the action of the tenant caused losses to the landlord. The landlords are entitled to be in the same position had the tenant not breached the Act. Therefore, I find the landlords are entitled to recover loss of rent for November 2020, in the amount of **\$3,000.00**.

I find that the landlords have established a total monetary claim of **\$30,690.56** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$30,190.56**.

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 landlords are granted a monetary order and may keep the security 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: February 03, 2021

Residential Tenancy Branch