



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH Pool XIV LP c/o Metcap Living
Management Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-PP, MNRL-S, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim 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 January 27, 2021, Canada post.

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 tenants have been duly served in accordance with the Act.

The landlord agent 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.

At the outset of the hearing the landlord’s agent stated that the tenants have vacated the rental unit and an order of possession is not required.

Issues to be Decided

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

Is the landlord 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 April 30, 2020 and was to expire on April 30, 2021. Rent in the amount of \$2,252.00 was payable on the first of each month. The tenants paid a security deposit of \$1,226.00.

The landlord's agent testified that the tenants were in rent arrears for December 2020 in the amount of \$1,226.00 and no rent for January 2021 was paid. The agent stated that the tenancy has now ended and, in the move-out condition inspection the tenants agreed that the security deposit would be applied towards the unpaid rent.

The agent stated that the total rent owed was \$3,478.00, less the security deposit of \$1,226.00 still leave a balance due of \$2,352.00 of rent owed. The landlord seeks a monetary order for the balance due of unpaid rent.

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 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 landlord's agent that the tenants were in rent arrears for December 2020, and January 2021. I find the tenants breached the Act when they failed to pay rent, and this has caused losses to the landlord. Therefore, I find the landlord is

Is entitled to recover unpaid rent of **\$3,478.00** and the **\$100.00** cost of the filing fee in the amount of **\$3,578.00**.

As the tenants have given the landlord permission to keep the security deposit in the move-out condition inspection report, I order that the landlord retain the security deposit of **\$ 1,226.00** in partial satisfaction of the claim. I grant the landlord an order under section 67 of the Act for the balance due of **\$2,352.00**.

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.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is 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: March 11, 2021

Residential Tenancy Branch