



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 landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on February 23, 2020 and was to expire on March 1, 2021. Rent in the amount of \$1,650.00 was payable on the first of each month. The tenants paid a security deposit of \$825.00. The tenancy ended on November 11, 2020.

The landlord claims as follows:

a.	Unpaid rent	\$3,000.00
b.	Liquidated damages	\$ 500.00
c.	Broken window	\$ 173.34
d.	Filing fee	\$ 100.00
	Total claimed	\$3,773.34

The landlord's agent testified that the tenants did not pay rent or the repayment of rent arrears for November 2020 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord's agent testified that the tenants did not pay the rent for November 2020. The landlord seeks to recover unpaid rent for November 2020, in the amount of \$1,650.00.

The landlord's agent testified that the tenants were under a repayment schedule for rent affected during the state of emergency. The agent stated the repayment schedule was breached and that the tenancy is over that repayment schedule no longer applies. The landlord seeks to recover unpaid rent arrears in the amount of \$1,350.00.

The landlord's agent testified that due to the tenant's failure to pay rent and were evicted as a result of their breach. The landlord is entitled to recover the liquidated damage clause as stated in the tenancy agreement, for the estimate cost of re-renting the premise. The landlord seeks to recover the cost of \$500.00.

The landlord's agent withdrew the cost of the broken window, for the sole benefit of the tenants.

The tenants did not dispute the amount of rent arrears. The tenants testified that rent for November 2020, should be prorated because they were only living in the premise until November 11, 2020.

The tenants did not dispute the liquidate damages. The clause was read to the tenants during the hearing for clarity.

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 both parties that the tenants had rent arrears that were incurred during the state of emergency and a repayment schedule was completed. At the end of the tenancy those amounts remained outstanding and the repayment schedule is no longer in effect as it only applied if the tenancy continue. Since the tenancy has now ended, I find the landlord is entitled to recover the rent arrears in the amount of **\$1,350.00.**

Although I accept the tenants vacated the premise on November 11, 2020 in accordance with a notice tenancy for nonpayment of rent; however, rent for November 2020, was already due and owing. A tenant is not entitled to prorated rent when the tenancy ended due to their breach of the Act. The landlord is entitled to be in the same position as if the tenant did not breach the Act or the tenancy agreement. I find the landlord is entitled to recover unpaid rent for November 2020, in the amount of **\$1,650.00.**

The tenancy agreement has a liquidate damages clause which was a pre-estimate for the cost to re-rent the premise. As the tenancy was ended prior to the expiry of the fixed term agreement due to the tenants' failure to pay rent, I find the landlord is entitled to recover the liquidate damages clause in the amount of **\$500.00.**

I find that the landlord has established a total monetary claim of **\$3,600.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$825.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,775.00.**

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 04, 2021

Residential Tenancy Branch