



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord testified that the tenants were served in person on January 28, 2021. I find the tenants were duly served.

Both the landlord and the tenant ET appeared, gave 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

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 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 May 1, 2020 and was to expire on April 30, 2021. Rent in the amount of \$1,555.00 was payable on the first of each month. The tenants paid a security deposit of \$777.50. The tenancy ended on January 28, 2021, based on a 2 day order of possession.

The landlord testified that the tenants were under a joint tenancy and that they did not pay any rent for August, September, October, November, December 2020 and January

2021. The landlord seeks to recover 6 months of unpaid rent in the amount of \$9,330.00.

The landlord testified that the tenants would not vacate the premise until they received the order of possession, which was January 28, 2021, and they were unable to mitigate the loss for February 2021, rent due to their actions. The landlord seeks to recover loss of rent for February 2021, due under their fixed term agreement in the amount of \$1,555.00.

The tenant testified that they agree they did not pay the rent and it was not until they were served with the eviction notice that they vacated on January 28, 2021.

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.*

...

At the hearing the tenant admitted that they did not pay the rent for the above stated months. I find the tenants breach the Act and their tenancy agreement when they failed to pay the rent.

I am also satisfied that because the landlords had to obtain an order of possession, which the tenants did not vacate the unit until January 28, 2021, the landlord could not mitigate the loss of rent for February 2021.

Based on the above, I find the landlord is entitled to recover unpaid rent for the above said months in the total amount of **\$10,885.00**.

I find that the landlord has established a total monetary claim of **\$10,985.00** 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 **\$ 777.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$10,209.50**.

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 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 12, 2021

Residential Tenancy Branch