



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 loss of rent and unpaid utilities, 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 February 5, 2021, a Canada post tracking number was filed in 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.

The landlord appeared gave affirmed 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

Is the landlord entitled to a monetary order for loss of rent and unpaid utilities?
Is the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on December 15, 2020. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant paid a security deposit of \$700.00. The tenancy ended on January 31, 2021.

The landlord claims as follows:

| | | |
|----|--------------------------------|-------------------|
| a. | Loss of rent for February 2021 | \$1,400.00 |
| b. | Unpaid utilities | \$ 80.00 |
| d. | Filing fee | \$ 100.00 |
| | Total claimed | \$1,580.00 |

The landlord testified that the tenant gave notice to end the tenancy on January 24, 2021 with a vacate date of January 31, 2021. The landlord stated they immediately started to advertise the rental unit; however, due to short notice they were unable to find a new renter until February 15, 2021. Filed in evidence is a copy of the tenant's notice to end tenancy.

The landlord testified that the tenant was to pay 10% of the hydro bill. The landlord stated the tenant did not pay their portion and seek to recover the amount of \$80.00. Filed in evidence is the hydro bill.

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.

Tenant's notice (month-to-month)

45 (1) *A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

...

In this case, the tenant gave notice to end their tenancy on January 24, 2021, with an effective vacancy date of January 31, 2021, I find the tenant was not entitled to end the tenancy earlier than February 28, 2021, as they must give the landlord at least one month notice to end the tenancy.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord was that the advertised the rental unit and found a new renter commencing February 15, 2021. I find the landlord made reasonable efforts to minimize the loss; however, they still were at a loss for two weeks of unpaid rent due to the tenants breach of the Act. Therefore, I find the landlord is entitled to recover loss of rent from February 1 to 14, 2021 in the amount of **\$700.00**.

I accept the undisputed testimony of the landlord that the tenant failed to pay their portion of utilities. I find the tenant breach the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$80.00**.

I find that the landlord has established a total monetary claim of **\$880.00** 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 **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$180.00**.

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: June 07, 2021

Residential Tenancy Branch