



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 other money owed, and to recover the cost of the filing fee.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on March 3, 2022, Canada post tracking numbers were provided as evidence of service.

The landlord’s agent testified that the tenant PG accepted the package on March 7, 2022. I find PG was served in accordance with the Act on March 7, 2022.

The landlord’s agent testified that the tenant OK, did not retrieve their package. I find the tenant OK was deemed to have been served on March 8, 2022, which is five days after it was mailed in accordance with section 90 of the Act. Refusal or neglect to pickup the package is not grounds for review.

The landlord’s 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.

Preliminary matters

In this matter I have reviewed the tenancy agreement. PG is not a tenant listed under the terms of the agreement. PG is listed in the agreement as an occupant. I find PG is not a tenant under the Act. Therefore, I have removed PG from the style of cause.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and other money owed?
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 September 12, 2022 and was to expire on August 31, 2022. Rent in the amount of \$1,650.00 was payable on the first of each month. The tenant paid a security deposit of \$825.00. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that the tenant was to move into the rental unit on September 12, 2022; however, on September 15, 2022, they received an email from the tenant stating that they would not be moving into the rental unit because they lost their job. Filed in evidence is a copy of the email.

The landlord's agent testified that the tenant did not pay the prorated rent for September 2022, and they mitigated their loss by finding a new renter and their tenancy commenced on October 1, 2022. The landlord seeks to recover unpaid rent for September in the amount of \$1,002.00.

The landlord's agent testified that the tenant was under a fixed term agreement and in the agreement the tenant agreed that they would pay liquidated damages should they fail to meet their obligations under the fixed term agreement. The agent stated that was a genuine estimate of the cost of re-renting the rental unit. The landlord seeks to recover the liquidated damages as setout in the tenancy agreement in the amount of \$825.00.

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 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.

Section 16 of the Act states, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement with the landlord which was to commence on September 12, 2022. The tenant never took possession of the rental unit and sent an email to the landlord on September 15, 2022. I find the tenant breach section 45 of the Act, as they were not entitled to end the fixed term agreement until August 31, 2022.

The tenant did not pay the prorated rent for September 2022. I find the tenant breached section 26 of the Act when they failed to pay the rent. I find the landlord is entitled to recover the prorated rent in the amount of **\$1,002.00**.

The tenancy agreement contains a term that if the tenant breaches the fixed term tenancy agreement that landlord is entitled to liquated damages which was a genuine estimate of the cost of re-renting the rental unit. As I have found the tenant breach the Act, and the tenancy agreement, I find the landlord is entitled to recover liquidated damages in the amount setout in the tenancy agreement in the amount of **\$825.00**.

I find that the landlord has established a total monetary claim of **\$1,927.00** 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(s) an order under section 67 of the Act for the balance due of **\$1,102.00**.

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: October 18, 2022

Residential Tenancy Branch