



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code 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 compensation for monetary loss or other money owed, 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 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 the respondents 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 email on November 5, 2023, to the agreed upon email address in the emergency contact as this was an agreed upon method for serving documents relating to the tenancy. Filed in evidence is a copy of that agreement.

Section 90 of the Act determines that a document served in this manner is deemed to have been served three days later. I find that the tenants have been duly served in accordance with the Act.

The landlord stated that the tenants contacted them by email on December 6, 2022, stated they would not be at the hearing as they had left the country. However, this hearing is conducted by telephone.

I have not considered the landlord’s claim for unpaid rent. At the hearing the landlord is not claiming unpaid rent as they were claiming for loss of rent. Further, the details are does not indicate what months they are claiming for. Therefore, I dismiss this portion of the landlord’s claim with leave to reapply due insufficient particulars.

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 monetary compensation for monetary loss or 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 July 24, 2022 and was to expire on July 31, 2023. Rent in the amount of \$2,300.00 was payable on the first of each month. The tenants paid a security deposit of \$1,150.00. The tenancy ended on or about August 24, 2022.

The landlord testified that the tenants breached the fixed term agreement when they vacated the rental unit on or about August 24, 2022, as the tenants sent them an email that they were not happy. The landlord stated that as a result of the tenants breaching the fixed term agreement, they are entitled to recover liquidated damages as set out in the tenancy agreement in the amount of \$1,507.50. Filed in evidence is a copy of the tenancy agreement.

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-complying 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.

In this case, the evidence of the landlord was that the tenants breached the fixed term tenancy by providing notice to end the tenancy on August 24, 2022 and vacating the premises. However, under section 45 (2) of the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breached section the Act as the earliest date they could have legally ended the tenancy was July 31, 2023 as stated in the tenancy agreement.

As the tenancy agreement provides a liquidated damages clause, which was for the cost of re-renting the premises. I find due to the tenants' breach of the tenancy agreement, that the tenants owe the landlord **\$1,507.50**.

I find that the landlord has established a total monetary claim of **\$1,607.50** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,150.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$457.50**.

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 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.

The landlord is granted leave to reapply for loss of rent.

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 13, 2023

Residential Tenancy Branch