



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC

Introduction

This hearing was convened in response to applications by the tenant and the landlords.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for damage or loss under the Act; and
2. To recover filing fee from the landlords.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit; and
2. For a monetary order for unpaid rent.

September 27, 2012

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.

Preliminary issue

The tenant has filed a cross-application, however, the landlords did not receive a copy of that application due to the PO Box missing. As a result, I find that it is appropriate to adjourn both applications scheduled for today's hearing. This is to provide a fair opportunity to the landlord to review the tenant's application. A notice of adjourned hearing will be sent by regular mail to the parties at the addresses provided.

The tenant will send to the landlord a copy of the tenant's Application for Dispute Resolution.

November 1, 2012

Preliminary issue

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlords.

The tenant submitted additional evidence for today's hearing, therefore, I am satisfied the tenant was aware of the date and chose not to attend.

Therefore, as the tenant did not attend the hearing by 9:40 A.M and the landlords appeared and were ready to proceed, I dismiss the tenant's application without leave to reapply.

Today's hearing proceeded on the landlord's application.

At the onset of the hearing the landlords have withdrawn their claim for damages to the unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on October 1, 2011. Rent in the amount of \$975.00 was payable on the first of each month.

The landlord testified the tenant did not pay a security deposit. The landlord stated the tenancy commenced on October 1, 2011, however, the tenant did not move into the unit until October 14, 2012. The landlord stated the tenant is claiming in her filed evidence that a security deposit was paid on October 14, 2011, however, this payment was for October 2011, rent. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that the tenant was always late paying rent and on July 3, 2012, when she called the tenant, the tenant informed her that she did not have the money for rent and would move out of the rental unit. The tenant moved out of the unit on July 7, 2012.

The landlord testified the tenant did not provide proper notice to end tenancy as required by the Act and did not pay any rent for July 2012. The landlords seek to recover unpaid rent in the amount of **\$975.00**.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

The documentary evidence filed by the tenant claims on October 14, 2012, she paid \$975.00 which was for rent and a security deposit. The fact the tenant moved into the rental unit on October 14, 2011, does not mean the tenant was entitled to a prorated rent. The tenancy agreement filed in evidence indicates the tenancy commenced on October 1, 2011. Therefore, the amount received of \$975.00 was for October 2011, rent. I find the tenant did not pay a security deposit.

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.

In this case, the tenant did not pay rent for July 2012, which was due under the terms of the tenancy agreement. I find the tenant has breached section 26 of the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to compensation for unpaid rent for July 2012, in the amount of **\$975.00**.

I find that the landlord has established a total monetary claim of **\$1,025.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order.

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: November 01, 2012.

Residential Tenancy Branch