



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and a monetary order for unpaid rent.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 5, 2013, a Canada post tracking number was provided as evidence, the tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

The landlord 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.

Preliminary Issue

At the outset of the hearing, the landlord stated the tenant moved from the rental unit on February 7, 2013, and is no longer seeking an order of possession.

Issue to be Decided

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

Background and Evidence

The tenancy began February 1, 2012. Rent in the amount of \$695.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenant.

The landlord testified the tenant did not pay rent for January 2013, and was served with a 10 day notice to end tenancy for unpaid rent. The landlord stated the tenant did not dispute the notice and did not pay any rent.

The landlord testified the tenant did not vacate the rental unit on the effective vacancy date stated in the notice and was still residing in the unit until February 7, 2013, and did not pay rent. The landlord seeks to recover unpaid rent for January and February 2013, in the amount of \$1,390.00.

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.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 26 of the Residential Tenancy Act states:

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.*

The evidence of the landlord was the tenant did not pay rent owed for January 2013 and February 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,390.00**.

I find the landlord has established a total monetary claim of **\$1,440.00** comprised of the unpaid rent owed for January 2013, February 2013, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,090.00**.

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 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: February 28, 2013

Residential Tenancy Branch

