



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for compensation for money owed or loss under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of a 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 sent on February 6, 2013, a Canada post tracking number was provided as evidence of service. Also provided as evidence is the Canada post track history report, which indicated the tenant received and signed for package on February 7, 2013, the tenant did not appear. 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 unpaid rent?

Is the landlord entitled to monetary order for compensation for money owed or loss?

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 May 1, 2012 and was to expire on April 30, 2013. Rent in the amount of \$1,750.00, was payable on the first of each month. A security deposit of \$900.00 was paid by the tenant. Filed in evidence is a copy of the agreement.

The landlord claims as follows:

a.	Unpaid rent from December 1 to March 29, 2013	\$ 7,000.00
b.	Unpaid utilities	\$ 111.97
c.	Late payment of rent fee	\$ 300.00
d.	Filing fee	\$ 100.00
	Total claimed	\$ 7,511.97

Unpaid rent from December 1 to March 29, 2013

The landlord testified that the tenant failed to pay any rent for December 2012 and January 2013, the landlord stated that the tenant provided her a cheque, however, when she went to the bank the cheque was not cashable as there were insufficient funds in the account. The landlord seeks to recover unpaid rent for December 2012, and January 2013, in the amount of \$3,500.00.

The landlord testified that on January 29, 2013, the tenant returned the keys to the rental unit without providing any notice to end tenancy. The landlord stated due to short notice she would not have been able to find a new tenant for February 1, 2013, when rent was due under the agreement.

The landlord testified as a result of insufficient notice provided by the tenant and the fact that the unit was to be sold at the end of the fixed term agreement (April 30, 2013) she did not advertise the unit for rent. The landlord seeks compensation for loss of rent for February and March 2013, in the amount of \$3,500.00.

Unpaid utilities

The landlord testified that the tenant was responsible to pay for his hydro consumption. The landlord stated the tenant stopped paying for this utility after the first two months of residing the rental unit. The landlord stated the tenant made one payment of \$100.00 toward the balance owed, however, the current amount owed for the utility is \$111.97. The landlord stated the utilities are up-to and including January 2013. Filed in evidence are copies of the hydro bills from the start of the tenancy.

Late payment of rent fee

The landlord testified that the tenancy agreement provided a late payment of rent fee of \$50.00. The landlord stated the tenant did not pay rent for October and November 2012, until November 26, 2012. The tenant did not pay rent for December and January. The landlord seeks to recover the late payment fee in the amount of \$200.00.

The landlord also seeks to recover the late fee for February and March 2013.

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.

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 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.

Unpaid rent from December 1 to March 29, 2013

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 December 2012 and January 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 **\$3,500.00.**

The evidence of the landlord was that the tenant returned the keys on January 29, 2013, without providing any notice to end the tenancy. The evidence of the landlord was due to insufficient notice it would have been impossible to rent the unit for February 1, 2013, when rent was due under the fixed term tenancy agreement. I find the tenant breached the act, when they ended the tenancy prior to the fixed term as the earliest date they could have legally ended the tenancy was April 30, 2013. Therefore, I find the landlord is entitled to recover loss of revenue for February 2013, in the amount of **\$1,750.00.**

In this case, the landlord is also claiming unpaid rent for March 2013. While I have found the tenant breached the terms of the tenancy agreement. I find the landlord failed to minimize the loss by not advertising the unit for rent. Under section 7(2) of the Act, a landlord who claims compensation for damage or loss from the other party must do whatever is reasonable to minimize the damage or loss. As a result, I find the landlord is not entitled to recover loss of rent for March 2013.

Unpaid utilities

In this case, the tenancy agreement provided a term that the tenant is responsible for the cost of electricity. The evidence of the landlord was the tenant did not pay for all the costs associated to that utility. The documentary evidence supports the landlord claim. As a result, I find the tenant breached the tenancy agreement when they failed to pay the electric bill and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the loss in the amount of **\$115.97.**

Late payment of rent fee

In this case, the tenancy agreement provided a term that if the tenant fails to pay rent on time the landlord is entitled to recover a late payment fee of \$50.00. The evidence of the landlord was the tenant was late paying rent for October, November 2012 and failed to pay rent owed for December 2012, January 2013 and February 2013. Therefore, I find the landlord is entitled to recover the late payment fee in the amount of **\$250.00.**

As I have found the landlord failed to mitigate the loss for March 2013, rent, I also find the landlord is not entitled to recover the late payment of rent fee for March 2013.

I find that the landlord has established a total monetary claim of **\$5,715.97** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$900.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$4,815.97**.

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: April 24, 2013

Residential Tenancy Branch