



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPRIET
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

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

The landlord's agent attended the hearing. As the tenant 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 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 sent on April 15, 2013, the tenant did not appear.

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

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.

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$775.0 was payable on the first of each month. A security deposit of \$387.50 was paid by the tenant. The tenancy ended on March 25, 2013.

The landlord's agent testified that tenant did not pay rent for March 2013 and was served a 10 Day Notice to End the Tenancy. The landlord's agent stated the tenant accepted the notice and vacated the unit, however, failed to pay any rent for March 2013.

The landlord's agent testified that they are not seeking to recover the full amount of rent owed by the tenant and only seek to retain the security deposit to off-set their loss. The landlord stated they also are not seeking to recover the filing fee from the tenant.

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 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 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's agent was the tenants did not pay any rent for march and was served with a notice to end tenancy. 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. While in this circumstance the landlord is entitled to recover the full amount of \$775.00 for unpaid rent. However, the landlord seeks only to retain the security deposit in the amount of \$387.50.

Therefore, I find that the landlord has established a total monetary claim of **\$387.50** comprised of the above described amount. I order that the landlord retain the deposit in full satisfaction of the claim.

Conclusion

The landlord is granted a monetary award and may keep the security deposit in full satisfaction of the claim.

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: July 05, 2013

Residential Tenancy Branch

