



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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, and for 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 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 on June 4, 2015, a Canada post tracking number was provided as evidence of service, 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 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.

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 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, 2013 and was to expire on May 1, 2014. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00. The tenancy ended March 2014.

The landlord claims as follows:

a.	Unpaid rent from December 1, 2013 to April 1, 2014	\$5,500.00
b.	Filing fee	\$ 100.00
	Total claimed	\$5,600.00

The landlord testified that the tenant provided them with postdated cheques for rent. The landlord stated that the rent cheques for December 2013, and January 2014, February 2014, were returned due to insufficient funds in the tenants account. Filed in evidence are copies of cheques marked "item dishonoured".

The landlord testified that the tenant had placed a stop payment on the rent cheque for March 2014, and when they went to ask the tenant what happened they discovered that they had vacated the premises without any notice. Filed in evidence is a copy of a returned cheque showing reason "payment stopped".

The landlord testified that they advertised the rental unit on several local popular websites as soon as they became aware the tenant had vacated; however, they were unable to find a new rent for April 2014.

The landlord seeks to recover unpaid rent and loss of revenue in the total amount of \$5,500.00

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, 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-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.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.

...

I accept the undisputed testimony of the landlord that the tenant failed to pay rent for December 2013, January 2014, February 2014 and March 2014, as this is supported by the returned cheques. I find the tenant breached the Act, when they failed to pay rent and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$4,400.00.

I further accept the undisputed testimony of the landlord that the tenant breached the fixed term agreement, when the tenant abandoned the rental unit. I find the tenant breached the Act, as the earliest date they could have legally ended the tenancy was May 1, 2014, as stated in the tenancy agreement.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, I accept the undisputed evidence of the landlord that they advertised the rental unit on several local popular websites and were unable to find a new renter for April 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of revenue in the amount of **\$1,100.00**.

I find that the landlord has established a total monetary claim of **\$5,600.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,050.00**.

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

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 13, 2015

Residential Tenancy Branch

