



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of documentary evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

Preliminary Issue

At the outset of the hearing the landlords advised that they wished to pursue some costs for damages that they allege the tenant caused. However, the landlord did not provide sufficient notice of these claims to the Branch or to the tenant and did not submit an amendment to their application. It was explained to the parties that the landlords would be at liberty to make a separate application for those costs if the parties were unable to resolve them. Both parties indicated they understood that this decision would only address the landlords claim for unpaid rent and the recovery of the filing fee. The hearing proceeded and completed on that basis.

Issue to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlords' testimony is as follows. The tenancy began on April 15, 2016 and ended on October 31, 2017. The tenant was obligated to pay \$1000.00 per month in rent. The landlords testified that the tenant was consistently late in paying the rent and was at one time as much as five months behind. The landlords testified that the amount of unpaid rent as of today's hearing is \$3000.00. The landlords request that amount along with the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that she acknowledges that she was behind in rent and that there is money owing, however the tenant stated that the amount owing is \$2000.00.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlords bear the burden of proving the amount of unpaid rent. The landlords did not submit a rent ledger or breakdown of the amounts paid and for which months. The landlords were unsure and unclear as to the months that was owed or when payments were made. Based on the inconsistent and unreliable testimony of the landlords, I find on a balance of probabilities that the amount owing is \$2000.00. The landlords are entitled to that amount. The landlords are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlords have established a claim for \$2100.00. I grant the landlords an order under section 67 for the balance due of \$2100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 16, 2017

Residential Tenancy Branch