



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

This matter commenced on October 30, 2020 and was adjourned at the request of the parties. The interim Decision issued on November 2, 2020, should be read in conjunction with this Decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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 parties agreed that the tenancy began on Jul 15, 2019. Rent in the amount of \$3,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,750.00 a furniture deposit of \$3,500.00 and a key deposit of \$300.00 (the "Deposits"). The tenancy ended on July 15, 2020.

The landlord claims as follows:

a.	Unpaid rent from November 2019 to July 2020 \$31,500.00 less \$2,000.00 received from BC rent program	\$29,500.00
b.	Filing fee	\$ 100.00
	Total claimed	\$29,600.00

At the outset of the hearing the tenants acknowledged they did not pay the rent. RJ stated they did not pay the rent because they believe the landlord breached the Act.

The tenant RJ testified that there was a settlement agreement made on April 21, 2020. In which they settled on the amount of \$15,000.00 and both tenants would pay the amount of \$7,500.00 within 5 days. The RJ stated they had their portion. However, the landlord refused to accept it. Filed in evidence is an email.

The tenant EK testified that they did not agreed to the settlement present by their exspouse RJ. EK stated they had no ability to pay the amount as they were on maternity leave and was not involved or informed of this agreement that was being presented to the landlord by RJ.

The landlord's agent responded that the settlement agreement was not valid as EK did not consent and had not ability to pay, what RJ presented.

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.*

...

In this matter the tenants acknowledged rent was not paid. RJ stated this was because they believe the landlord breached the Act. However, a tenant cannot withhold rent simply because they feel justified to do so.

I further find the action of RJ troubling, when RJ presented a settlement agreement that was not consented to by EK. RJ knew that EK had no ability to pay and this appears to be an attempt to release themselves from their family obligations and obligation under the Act.

I do not accept the settlement offer is valid. RJ had no rights to make such an offer without the consent of EK, which made EK solely liable for an amount that they could not pay.

I find the tenants have breached section 26 of the Act, when they failed to pay the rent. I find the landlord has established the amount of unpaid rent in the amount of **\$29,550.00**.

I find that the landlord has established a total monetary claim of **\$29,650.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$5,550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$24,100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction.

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: January 22, 2021

Residential Tenancy Branch