



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR OPR MNSD FF MT CNR RR RP MNDC LRE

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

2. This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act for orders as follows:

- (f) To cancel a Notice to End Tenancy for unpaid rent and utilities;
- (g) To compensate the tenant in the amount of \$4480 for repairs not done, for multiple violations of her privacy and right to quiet enjoyment and for repairs, for moving out old appliances and the cost of a newer stove and refrigerator;
- (h) To order the landlord to comply with the Act and to make emergency and other repairs.

### **SERVICE**

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated April 5, 2013 by posting it on the door and the Application for Dispute Resolution by registered mail. The landlord agreed he received the Tenant's Application by registered mail also. I find the parties were properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated April 5, 2013 for unpaid rent. Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee? What is the amount of unpaid rent which the landlord has proved?

Has the tenant proved on the balance of probabilities that she is entitled to compensation for repairs not done, for multiple violations of her privacy and right to quiet enjoyment and for repairs, for moving out old appliances and the cost of a newer stove and refrigerator and if so, what is the appropriate amount of compensation?

Is the tenant entitled to an order to set conditions on or to suspend the landlord's right to enter the property pursuant to section 29?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. This was a very contentious hearing with a volume of evidence, mostly in statements from the parties. The landlord is claiming rental arrears since 2011 and the tenant is disagreeing with the amounts. The undisputed evidence is that the tenant commenced living in the premises in February, 2011 but the tenancy did not commence until March 2011, a security deposit of \$450.00 was paid and rent is currently \$850 a month. The landlord said rent for 2011 was all paid but then said the tenant owes \$250 for 2011 as he had reduced the rent based on her stated problems and on her promise to pay later when her finances improved. In evidence is a note signed by the tenant dated June 2, 2012 stating she owes \$150 in monthly balance and will pay outstanding balance upon income increase or through estate. Another note is dated March 13, 2013 and states she agrees she owes back rent with details of total amount to be properly drawn up. The landlord submitted some copies of a notebook page in which he states he recorded his rent payments. The 2011 page is initialled one month by the tenant showing \$850 paid but after her initials, “ -50” is written in (she says after the fact). The landlord justified this by saying rent should have been \$900 a month so the security deposit was \$450; the lease in evidence states \$850 a month. He said that he reduced the rent to \$800 a month in 2012 for the year on her promise to pay when her finances improved. Neither party submitted any receipts. The tenant said she had requested them but never received any, the landlord said he had provided receipts or written them on her calendar. He said she paid rent in bits and pieces in cash as the first cheques she gave him had been returned NSF; he said he had to go to the home to collect the rent. The landlord requests an Order of Possession and a monetary order for \$5,000. The tenant does not dispute that she owes rent of \$1700 for April and May 2013 and \$490 for March 2013.

The tenant asks that the Notice to End Tenancy for unpaid rent be set aside and claims that the landlord owes her \$4,480. She bases this on a request for a retroactive rent rebate of \$150 a month from March 2011 as she was not made aware of the scope of disrepair of the unit when she moved in and also as compensation for the multiple

violations of her right to privacy and quiet enjoyment by the landlord. She provided copies of a letter in evidence which her advocate and witness had helped her write. The landlord agreed he received the letter in April 2011 but says he did all the necessary repairs within that month. The tenant's updated letter notes in red that most of the issues were addressed but the dishwasher was not functional until April 9, 2011 and still backs up. She notes the landlord gave her \$100 to replace the stove (as a rent rebate) but she bought a stove and refrigerator for \$350 which matched as she could not get a stove for \$100. The landlord took the old refrigerator for another tenant. The tenant notes ongoing problems with the toilet leaking and encouraging mould and a broken cabinet. The landlord said he has looked at the bathrooms and there is nothing wrong, although they are 30 years old and show their age. The tenant also notes an overpowering smell of urine from some laminate flooring because the previous tenant had cats. The landlord said he has smelled it and this is not true. He notes this tenant has two cats.

The tenant claims violation of her privacy. She said she has reported this to police and is seeking a "No contact" order. She said the landlord entered with his passkey in March 2011 while she was showering, her witness said she came to her door in alarm at that time. The landlord denies having a key and said he did not enter. When he has come around, he says he is seeking his rent and as the tenant does not answer her door often, he has enquired from neighbours about her whereabouts. Her witness and advocate said he had asked such questions of her and it was not her business to respond, although she had noted her name on the original letter in April 2011 as the tenant's advocate.

The tenant also requests \$130 as reimbursement for laundry services. She said she was without a washer for 6 weeks; the landlord estimates it was 3 weeks due to her not allowing him and the installer in when he brought a replacement (her son was sleeping) and her insistence on putting it in herself. She requests \$200 for paint and labour in painting the suite; she agrees this was on her own initiative. The landlord said she wanted different colours. She also requests \$300 for her labour in moving out the old appliances. She said a scrap man came and got them but she helped. She also requests reimbursement of \$250 for the replacement refrigerator and stove that she bought. The landlord had given her a rebate of \$100 and the receipt for the items is \$350.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

### **Order of Possession**

I find that the landlord is entitled to an Order of Possession. Although there was dispute as to the amount owing, the tenant agreed that she owed \$2190. Section 26 of the Act provides that a tenant may not withhold rent, even if the landlord is not meeting his obligations under the Act. An Order of Possession is issued effective two days from service as advised in the hearing.

### **Monetary Order**

The onus of proof on the balance of probabilities is on the landlord to prove the amount of rent in arrears. I find agreement that there are rental arrears in the amount of \$1700 for April and May 2013 and \$490 for March 2013. However the tenant has disputed the other amounts claimed by the landlord. Neither party provided receipts and I find the landlord's records are poorly kept. In examining his records carefully and cross referencing them to evidence in the hearing for 2012, I find support for the following amounts in 2012: April \$300, June \$150, July \$220, Aug. \$150, Sept. \$850, Oct. \$150, Nov. \$100 and Dec. \$100 for a total of \$2,020 owed for 2012. I note that he had accounted for the cheque from the neighbour for \$350 on November 1 and also that the tenant signed some notes indicating that she owed back rent in 2012 and in 2013 (with no indicator of payment until there was an income increase) and this supports the landlord's evidence. In 2013, I find support that January rent of \$850 was not paid and also \$100 in February 2013 in addition to the amounts agreed by the parties. The total owed as above is \$5,160. The landlord has claimed on the Application arrears of \$5,000 and he will be limited to this claim as a principle of natural justice is that parties must be advised of the claim against them.

In respect to the tenant's claim, the onus is on her to prove her claim on the balance of probabilities. I find the weight of the evidence is that the landlord acted in a timely way to do repairs. I find based on the tenant's letter that he completed most of these repairs by April 2011 and the tenancy began in March. I find also the addendum to her lease which is signed by both parties provides that she will take possession in February 2011 and in lieu of rent for that month, she agrees to do cleaning and/or small repair work. I dismiss her claim for a blanket reduction of \$150 a month since March 2011 as I find the landlord fulfilled his obligation to repair most items in a timely fashion and she had agreed to do some herself. However, I find she had a non functioning washer for 3 to 6 weeks. I find she is entitled to a rebate of \$130 as claimed for this situation. Regarding the claim for the few items that are still allegedly unresolved such as urine soaked laminate, I prefer the landlord's evidence that the laminate does not smell of cat urine and even if it did, it may have been caused by the tenant's own cats. Likewise, I find the landlord's evidence credible that the toilet does not leak for if it did, the strata occupants below would have complained. I also find that many of the other complaints

of the tenant relate to strata issues that are not controlled by the landlord such as the continued leaks in the building's roof and lint buildup in the dryer outlets. Receipts in file show the strata are addressing many of these issues.

In respect to her claim for violation of her privacy, I find insufficient evidence that the landlord entered her suite or harassed her. I find the landlord's evidence credible that he does not have a key to the suite as this is supported by the fact that neighbours recount him asking if she is home and one neighbour mentions that he did not have a second key and tried to meet the tenant at her son's school. Although the advocate neighbour said the tenant was alarmed in 2011 and said the landlord had entered her suite illegally, the neighbour did not see him entering the suite but relied on the tenant's word. I also find it illogical that if the landlord was entering her suite, she did not lay charges with the police at that time. I find the advocate's letter quotes other neighbours; I place little weight on this second hand evidence but some neighbours did write letters themselves mentioning the frequency of the landlord's visits. The neighbours note these events occurring in April 2013 and the landlord said he was trying to collect rent from her and she was refusing to answer her door. His evidence is supported by a letter which he wrote to her in April at the time of the serving of the 10 day Notice noting he has made many visits to collect rent as she is now over \$3,000 in arrears. Apparently she has talked to two officers since then about the landlord's alleged harassment but nothing has been done as yet. While I find the landlord's behaviour somewhat inappropriate and demanding, I find insufficient evidence that is amounted to harassment as the landlord has a right to collect rent. I find his evidence credible that he had no intention of harassing the tenant but he wanted to merely collect his rent and she was refusing to answer the door. His evidence is supported by the fact that most of the cited incidences occurred in April 2013 when she had not paid rent for two months and one instance of him visiting was to serve the 10 day Notice which is his legal right. As explained to the tenant, I have no jurisdiction to deal with No Contact orders which she may obtain through her local police.

I find the tenant painted the suite on her own initiative as stated in her letter, not at the request of the landlord who said the former paint was fine and she wanted a change of colour. The fact that she found a spongy wall, I find is a Strata issue over repair of the roof and not caused by act or neglect of the landlord. I find her not entitled to recover costs for painting.

She agreed in the hearing that someone picked up the old appliances for free but she wanted compensation for her labour in helping him move them. I find no evidence that she requested the landlord to provide assistance in moving the old appliances and I find insufficient evidence that the landlord should give her compensation for this. In respect

to her purchase of the stove and refrigerator, I find she paid \$350 as evidenced by the receipt and only received \$100 in rent rebate. I find the landlord addressed her stove complaint in a timely way in April 2011 by giving her money to buy a used one but I find the weight of the evidence is that the landlord owes her \$250 in compensation for the stove and refrigerator. Although the landlord disagreed, I find that he has benefitted from appliances that match and he did remove the old refrigerator and use it elsewhere.

**Conclusion:**

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

I find the tenant entitled to rebates as calculated below and for the reasons cited above. No filing fee was involved for her. I dismiss all the other claims of the tenant in their entirety without leave to reapply.

Calculation of Monetary Award:

Arrears of rent limited to claim amount	5,000
Filing fee	100.00
Less security deposit (no interest 2011-2013)	-450.00
Less rebates \$130 +\$150	-280.00
Total Monetary Order to Landlord	<b>4,370.00</b>

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: May 14, 2013

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Residential Tenancy Branch

