



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF CNR

Introduction:

1. 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:

- (e) To cancel a Notice to End Tenancy for unpaid rent and utilities as the records are inaccurate;
- (f) To order the landlord to comply with the Act and to make emergency and other repairs and to grant a rebate of rent for repairs not done;
- (g) To recover the filing fee for this application.

SERVICE

Both parties attended and the tenant agreed he received personally the Notice to end Tenancy dated April 10, 2013. At first the tenant denied receiving the Application for Dispute Resolution by registered mail but agreed he had received it after it was verified online. He objects to service of much of the evidence to his employment office. The landlord agreed he received the tenant's application by registered mail. I find that the applications were properly served according to sections 88 and 89 of the Act and comments on the evidence will be made in the course of the decision.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated April 10, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee? Or has the tenant demonstrated that the landlord's accounting is incorrect and that he is owed money for utilities overpaid?

Has the tenant proved on the balance of probabilities that he is entitled to a rent rebate for repairs not done or facilities not provided as promised? Is the tenant entitled to recover the filing fee for this application?

Should the landlord be ordered to make repairs?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. This was a lengthy contentious hearing with several volumes of evidence. The undisputed evidence is that the tenancy commenced on February 1, 2012, a security deposit of \$625 and a utilities payment of \$116.51 were made on February 10, 2012. and rent was \$1250 a month. The landlord provided a Statement of Rental Account to support his claim. On the Notice to End Tenancy dated April 10, 2013, he states \$6,000 is owed, on his application dated April 19, 2013, he wrote \$4,000 and later changed it to \$5500. He explained in the hearing that the increase on the application was to add May rent and utilities of \$1500. He explained the discrepancies and variances in the amounts noted as owed for rent by saying that the tenant voluntarily upped the amounts because of NSF cheques. The tenant disagrees and said he was overcharged.

The utility amount shown on his account is \$116.51 per month and the rental amount changes from \$1250 to \$1366.49 in May 2012 and to \$1383.49 in July 2012. He shows the tenant paid varying amounts from \$1366 to \$1500 during the tenancy. Through questioning of the landlord's partner, tenants and witnesses and studying utility bills by the arbitrator, it was determined that the utility bill for the tenant (based on 50% of the house utilities) should have been \$108.25 monthly and that the initial charge of \$116.51 was for a period before the tenancy commenced as the billing date was in January 2012. There was also an adjustment of the equal installment plans in January 2013 of \$50.42 which was not credited to the tenant. The landlord's partner said the 2013 utility bills are for hydro \$108 (Jan.) , 63 (Feb.), and \$104 for each of March, April and May and \$26.09, \$82, \$82, and \$130 for gas, The landlord and his witness testified that because of significant problems with NSF cheques from the tenant, it became an accounting nightmare . The tenant said he saw no utility bills but the discrepancies were noted when he took his records to his accountant and then queried the tenant upstairs about the utility accounts.

The tenant provided a spread sheet of amounts paid and owing. Based on the correct utilities amount of \$108.25 per month, the tenant showed his rent should have been \$1358.25 per month including utilities and his total outstanding as of December 2012

was \$392.16. He notes that based on the new installments, his utility payment for 2013 should be \$93 and his new rent \$1342.00. He agrees he has not paid his total rent for March, April or May but notes he paid extra amounts in January and February 2013. His accounts show that he would have owed \$8052 from January to May plus \$392.16 carried over and he paid \$5,000 over this period. It appears that he now owes \$3,444.16 in rent. He submitted evidence of all payments verified by bank statements and paid cheques. In emails he disagreed with the landlord's accounts and offered to meet with him to correct the amounts and to pay the correct balance outstanding but the landlord did not meet with him or correct any records.

The tenant and his witness gave evidence concerning lack of repair to the home. There is a problem with the furnace and thermostat wiring and the upstairs tenant informed the landlord of this problem in 2012. The backyard fence was blown over in a storm, the gutters around the house are overflowing because they are filled with tree debris and this causes pooling of water so the tenants and visitors have to walk through pools of water to access their homes. The tenant said that the neighbours can look directly into his bedroom window as the fence is gone and this significantly impacts his privacy and freedom from disturbance and it is also very unsightly and unsafe. The landlord said he had nipped the trees so the gutters would not get tree debris, the gutters do not impact the entrances and the fence is on the west side so it does not affect the tenants being able to access or to store items.

The tenant said that his toilet rocks in his only bathroom and it belches gas. This was on the condition inspection report at move-in as needing repair but was it never done. He said the pipe is the wrong type for the fixture. Photographs were submitted as evidence. He said there are no locks on his windows and this impacts safety and possibly insurance. He said his door swells and does not lock properly. He found it a violation of his privacy that the landlord sent much of the evidence by fax to his place of employment and some by courier that was only discovered sometime later in the file.

As stated previously, there are several hundreds of pages of documents submitted and the hearing was lengthy so not all of the evidence is quoted here but all of it is considered as part of my decision. 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 not entitled to an Order of Possession. I find his Notice to End Tenancy was significantly flawed in claiming unsupported and undocumented amounts from the tenant. I find his accounting ledger cannot be relied on as it has incorrect

amounts for the rent and utilities and I find his explanations not credible. I find the tenant did not “voluntarily” increase payments to \$1500. In support of this finding, I note that the landlord is claiming \$1500 in rent and utilities for May which is again incorrect. In the absence of any correct records that a competent, businesslike landlord would be expected to maintain, I find the landlord has not met the burden of proof to establish the amount of outstanding rent or that the tenant was given proper notice of this amount.

Monetary Order

I accept and rely on the tenant's records of outstanding rent as they are well supported by bank statements, cancelled cheques, money orders and a spread sheet showing debits and credits. I find he owes about \$\$3,444.16 in rent and utilities to the end of May, 2013 although the 2013 utility bills may vary this amount somewhat. The overpaid utility bill made for utilities before he commenced his tenancy

In respect to the tenant's request for repairs, I find he is entitled to an order that the landlord effect repairs as outlined below and the tenant will be granted rebates of rent until such repairs are done. The tenant is also granted a rebate of rent for repairs not done. For the toilet problem that has existed throughout the tenancy and of which the landlord had written notice, I grant the tenant a rebate \$50 a month for 16 months or \$800 in total. I find the lack of the privacy fence (since March 29, 2012 when the landlord was notified by email) has violated the tenant's right to privacy guaranteed by section 28 of the Act and I find the tenant's right to privacy and peaceful enjoyment was also violated when the landlord faxed documents of evidence to the tenant's workplace which impacted the tenant's relationships in the workplace. Faxing documents to a tenant's workplace is specifically forbidden in RTB 119 unless the tenant has provided this permission for contact. For the violations of the tenant's right to privacy and peaceful enjoyment, I find the tenant entitled to a rent rebate of \$500. An Order will follow that the landlord repair the fence, the eave trough and put locks on his windows and repair his door so it locks properly. A Rebate of rent of \$50 a month will be granted from July 1, 2013 until all of these repairs are completed in order to provide incentive for the landlord to effect the repairs as soon as possible.

Conclusion:

I find the landlord is not entitled to an Order of Possession related to the Notice to End Tenancy dated April 10, 2013 for the reasons stated above. I find the landlord is not entitled to the filing fee for this application as he did not meet with the tenant as requested to reconcile his records but instead chose to serve a 10 day Notice and file this application based on incorrect calculations. **The tenancy is reinstated.**

A monetary order is calculated below based on the verified tenant's records of amounts owed which were well supported and the rebates granted above. I find the tenant entitled to recover filing fees paid for his application.

Outstanding rent & utilities to May 30, 2013 based on tenant records	3,444.16
Rebate for lack of toilet repair	-800.00
Rebate for violation of privacy and lack of reasonable enjoyment	-500.00
Filing fee allowed to tenant	-50.00
Total Monetary Order to Landlord	2,094.16

I HEREBY ORDER YOU, THE LANDLORD, TO REPAIR THE TENANT'S TOILET BY MAY 30, 2013. FOR EVERY MONTH THAT THE TOILET IS NOT REPAIRED STARTING JUNE 1, 2013, THE TENANT MAY DEDUCT \$50 FROM HIS RENT.

I HEREBY ORDER YOU, THE LANDLORD TO REPAIR THE FENCE, CLEAN AND REPAIR THE EAVE TROUGH, REPAIR THE TENANT'S DOOR AND PUT LOCKS ON THE TENANT'S WINDOWS BY JUNE 30, 2013. FOR EVERY MONTH THAT ANY OR ALL OF THESE ITEMS ARE NOT REPAIRED, THE TENANT MAY DEDUCT ANOTHER \$50 FROM HIS RENT.

I HEREBY ORDER YOU, THE LANDLORD, TO PROVIDE THE TENANT WITH COPIES OF EACH ORIGINAL UTILITY BILL WITH A CALCULATION SHOWING THE AMOUNT TO BE PAID BY HIM.

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 16, 2013

Residential Tenancy Branch

