



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

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

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- 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.

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

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for repairs to the property;
and
- g) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and confirmed receipt of the Notice to End Tenancy dated May 2, 2013 and of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or has the tenant demonstrated that the Notice to End Tenancy for unpaid rent should be set aside and that they are entitled to compensation for deck repairs and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in August 2009, that rent is currently \$2301.35 a month and a security deposit of \$1050 was paid on August 1, 2009. It is undisputed that the tenant has not paid rent for part of April, and all of May and June 2013 but they made an Application on May 8, 2013 to request compensation for repairs to a deck in 2011 and to cancel the Notice to End Tenancy for unpaid rent. The landlord claims \$401.35 for April and \$2301.35 for each of May and June 2013 plus \$150 fee for NSF cheques. The tenant said that the \$150 charge for NSF cheques was included in the \$401.35 claimed but the landlord denied this and pointed to the Notice to End Tenancy which sets this out.

The tenant said they vacated on May 16, 2013 to comply with the Notice to End Tenancy and left the keys in the mailbox. However, when it was verified in the hearing that the landlord could go and get the keys now from the mailbox, the tenant said he was **going** to put the keys in the box but they were not there now.

The tenant said that the deck of the home was unsafe and they told the landlord by phone in 2011, and the landlord promised to come and look at it but never did so they fixed it themselves. They claim \$660.63 for material, \$2880 for labour and \$100 for disposal and dump fees. They agree that they never informed the landlord in writing or presented invoices for payment. The landlord denies the tenant ever informed them about the deck repair, they say they were shocked when the tenant put this in their application and they point to some emails in evidence to show that communication was by email and they did repairs when informed. The tenant noted in their application that the carport post had been fixed but there was a continuing fireplace problem.

In evidence is the Notice to End Tenancy for unpaid rent, emails, a lease, and copies of the tenants' cheques that were returned NSF.

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 the weight of the evidence is that there is unpaid rent. Pursuant to sections 46 and 55, I find the landlord entitled to an Order of Possession. Although the tenants said they had already vacated, I find their statements somewhat inconsistent as first they said they left the keys in the mailbox when they vacated on May 16, 2013 and then later in the hearing, they said they were going to leave the keys in the box but they were not

there as of today. I am issuing an Order of Possession, effective two days from service which the landlord may or may not need to enforce.

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenant owes unpaid rent in the amount of \$5,004.05 (\$401.35 plus \$2301.35 plus \$2301.35 as claimed above). I find the landlord is limited to \$25 fee for each NSF cheque according to the Residential Tenancy Regulation section 7(1) (d) and I find the landlord has proved entitlement to this amount. Although the tenant said that NSF fees were included in the \$401.35 claimed for April, I prefer the evidence of the landlord; I find it more credible as it is supported by the Notice to End Tenancy setting out these amounts. Although the tenant contended they should not be liable for rent for June 2013 as they vacated on May 16, 2013, I find they are still in possession of the premises as of today as they have never given back the keys to the landlord.

On the tenant's application, the onus is on him to prove on the balance of probabilities either that the repairs to the deck were an emergency, that he complied with section 33 of the Act and gave the landlord notice with invoices and was not reimbursed or in the alternative, the tenant has the onus to prove that repairs were necessary, that the landlord approved the repairs and that the tenant could do the work for reimbursement. I find the tenants have not satisfied the onus. I find insufficient evidence that the landlord was informed and failed to do repairs as needed. The landlord's oral evidence of doing repairs promptly is supported by the emails in evidence showing they did repairs when informed and also by the acknowledgement of the tenant that the car port was repaired; therefore I find the landlord's evidence more credible.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application.

I find the landlord entitled to an Order of Possession and a monetary order as calculated below and to recover their filing fee. I find the landlord entitled to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Rent arrears	5,004.05
NSF charges (25x3)	75.00
Filing Fee	50.00

Less security deposit (no interest 2009-2013)	-1050.00
Total Monetary Order to landlord	4,079.05

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: June 04, 2013

Residential Tenancy Branch

