



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR 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) To order the landlord to do emergency and other repairs;
- g) To dismiss this application as a Notice to End Tenancy was not served.

SERVICE

Both parties attended the hearing. The tenant contended that a Notice to End Tenancy was not served. The landlord gave detailed evidence of serving it on the son, his appearance and comments at the time; I find the landlord's evidence more credible and I find the Notice to End Tenancy was served personally on the son. Each party confirmed receipt of each other's Application for Dispute Resolution. 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 the tenant was served the Notice to End Tenancy for unpaid rent and the amount of the unpaid rent or has the tenant demonstrated that they are entitled to relief? Is the landlord entitled to an Order of Possession?

Have the tenants proved on the balance of probabilities that the landlord has not complied with the Act and done necessary repairs?

Are the parties entitled to recover filing fees for their applications?

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 2010, although there was dispute as to the actual month; it is undisputed that rent was \$900 a month and increased to \$1100 by agreement, although the tenant states now she did not agree but did sign the agreement at the time. It is undisputed that a security deposit of \$450 was paid in 2010. It is undisputed that the tenant has not paid rent for June or July 2013 and owes \$500 from November 2012.

The landlord also claims \$600 was unpaid for January 2012. The tenant said she withheld this amount for carpet/lino she had to install but when challenged by the landlord, she said it was for wood flooring. The landlord said that all this was handled in 2010 and she got two months free rent for those repairs; the tenant agreed she got two months free rent but said it was not enough to cover all the amounts she spent. The landlord claims also \$100 is owed for each of April and May 2013 but the tenant said this was an agreed deduction because of her problems at the time. The landlord said that the deduction was on certain conditions which she did not meet, such as paying her rent on time and cleaning up the yard. In total the landlord claims \$3500 is owed for unpaid rent. In evidence is the Notice to End Tenancy dated June 2, 2013 stating that \$2400 of rent was owed as of June 1, 2013.

The tenant complained that repairs were not done and submitted a written statement saying the kitchen roof leaks, rain water goes into the basement and some of her belongings have been ruined, her health has been affected by the damp and mould so she had to go into hospital and they had rats. She requests repairs be done and asks for \$3400 in compensation. No evidence of requests to the landlord for repairs was submitted and no documentary evidence showing necessary repairs was submitted for the hearing.

In evidence is the Notice to End Tenancy for unpaid rent and a statement from the tenants.

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

Analysis:

As explained to the parties in the hearing, the onus is on each of the applicants to prove on a balance of probabilities their claim. I find the landlord has proved that there are rent arrears and he is entitled to an Order of Possession. The tenant refused to negotiate a move-out date so an Order of Possession is issued to be effective two days from service.

I find the landlord has proved that \$2200 of rent is owed for June and July 2013, \$600 for January 2012 and \$500 for November 2012. The tenant agreed these amounts had not been paid. I find the evidence is that the tenant had signed an agreement for the rent to be increased to \$1100 so it was not an illegal rent increase under section 43 of the Act. Although the tenant contended she withheld the \$600 in January 2012 as compensation for repairs she did, I find section 26 of the Act prohibits the withholding of rent unless certain conditions are met; there is no evidence that these conditions were met so I find she owes this \$600 to the landlord. I find the weight of the evidence is that the landlord granted her a deduction of \$100 for each of April and May 2013; although the landlord now contends it was on conditions, I find insufficient evidence to support this statement and the Notice to End Tenancy dated June 2, 2013 did not include these amounts (it was for \$1100 plus \$600 plus \$500 = \$2400) which supports the contention of the tenant that it was a granted deduction. Therefore the monetary order to the landlord will not include \$100 for each of May and June 2013.

On the tenant's application, the onus is on them to prove on the balance of probabilities that repairs were necessary, that the landlord was notified and that they were not done. I find insufficient evidence that the landlord did not fulfill his obligations, or that repairs were necessary or that lack of repair impacted the tenants. The landlord denied the allegations of the tenants. Therefore I dismiss the application of the tenant for monetary compensation as they have not provided sufficient evidence to support their claims.

Conclusion:

I find the landlord entitled to an Order of Possession and a monetary order as calculated below. I find him entitled to retain the security deposit to offset the amount owing and to recover filing fees for this application.

I dismiss the application of the tenants in its entirety. I find them not entitled to recover filing fees for their application.

Calculation of Monetary Award:

Rent arrears for June and July 2013	2200.00
Rent arrears for Jan. (600) and Nov (500) 2012	1100.00

Filing fee	50.00
Less security deposit	-450.00
Total Monetary Order to landlord	2900.00

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: July 24, 2013

Residential Tenancy Branch

