



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR CNR OPR MNSD MNDC 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.

SERVICE

Only the tenant attended and gave sworn evidence that she was served personally with the Notice to End Tenancy dated November 14, 2013 and with the landlord's Application for Dispute Resolution. She served her Application by registered mail and it was verified online as successfully delivered. 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 he is entitled to an Order of Possession and a monetary order for rental arrears? Or has the tenant shown that the Notice to End Tenancy dated November 14, 2013 should be set aside and the tenancy reinstated?

Background and Evidence:

Only the tenant attended although this was a cross application and the landlord was also served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and to make submissions. The tenancy commenced in March 2012 and the tenant said that she never got a copy of a tenancy agreement but agrees she did sign an agreement to pay \$450 a month for rent. She said a male who shared the unit also signed to pay \$450 a month but he died in January 2013. She said there was no joint tenancy agreement, the Ministry remits her rent cheques and she has

been paying \$450 a month since February 2013 without objection. She requests that the Notice to End Tenancy for unpaid rent be set aside and cancelled as she has paid all her rent.

In evidence is the Notice to End Tenancy for unpaid rent and shelter information from the Ministry. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has not satisfied the onus. He submitted no evidence other than the Notice to End Tenancy stating that \$2475 in rent was owed as of November 14, 2013 and he did not attend the hearing to support his claim. I find him not entitled to a monetary order for unpaid rent.

I find the tenant's evidence credible that her rent was \$450 according to an agreement signed with the landlord. Her evidence is supported by the Ministry Form for shelter information and a cheque stub from them. The landlord provided insufficient evidence to dispute her claims that this was a separate agreement and not a joint tenancy. Therefore, I set aside the Notice to End Tenancy dated November 14, 2013


Conclusion:

I dismiss the application of the landlord in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application. The Notice to End Tenancy dated November 14, 2013 is hereby set aside and cancelled. The tenancy is reinstated and continues.

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 14, 2014

Residential Tenancy Branch



M. Bruce, Arbitrator
Residential Tenancy Branch

