



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; and
- c) 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:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) An Order that the landlord do repairs to the property pursuant to sections 32 and 33 and;
- f) A monetary order or rent rebate as compensation for repairs not done to the property and for lack of peaceful enjoyment.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated November 14, 2013 and 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 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 lack of repair and lack of peaceful enjoyment of her unit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It was stated that the tenancy commenced in February 2013 with no written agreement, that rent was \$250 a month for a downstairs room but \$350 a month when the tenant moved upstairs and occupied what was the former living room. It was found in a prior hearing under file #537615 that the former living room has only a bifold closet door and cannot be secured properly and a rent rebate of \$25 a week was granted to the tenant commencing August 12, 2013. It was confirmed today that a solid hinged door (as ordered) has still not been installed; the landlord said the bifold door is secure as she can lock it but the tenant disagreed. In the prior hearing, another rebate of \$25 a week was granted for each partial week the unit is not supplied with a bed; it was confirmed today that the tenant has to supply her own bed for she said the landlord made her give the included bed to another tenant. The landlord said this is not true, she chose to give it to another tenant as she has her own bed.

The landlord is requesting an Order of Possession and a monetary order for unpaid rent, although he said the monetary order is not important. The tenant agreed she has not paid rent from September 2013 so presently is 5 months in arrears but she disagrees with the amounts owed as she said the rebates have to be deducted plus the overpayment of \$100 by the Ministry for each of July and August 2013. She said she refuses to pay rent for the landlord does not give receipts and returns cheques she mails. The landlord emphasizes that the rental agreement was for \$350 a month to be deducted from the tenant's monthly wages and she stopped working for him in July 2013. He said the receipts submitted as evidence show that she got many wage advances although this was inconvenient for his bookkeeping and it illustrates that he is not unwilling to give receipts but he could not for the past five months for she did not pay him any rent. He notes the payments of \$450 from the Ministry were designated to repay the \$6000 loan he made to the tenant for storage fees so she could retrieve her possessions and her car. He provided a copy of the loan agreement, receipt for storage fees and car documents as evidence of this. The deposited Ministry cheques were applied to loan payments and not to the rent. He notes that before cashing them, he did speak to the Ministry in an effort to have the amount changed to the rent amount but they told him that any action on it had to be initiated by the tenant so he cashed the cheques. The tenant notes again that August rent was paid by a Ministry cheque. She accuses the landlord of tax fraud, theft and illegal business.

In evidence is the Notice to End Tenancy for unpaid rent, a loan agreement dated April 14, 2013 showing a loan of up to \$6000 with the borrower agreeing to installments of \$450, and a letter from a person who introduced the tenant to the landlord outlining how

the tenant was in unfortunate financial circumstances, was homeless and about to lose her possessions when the landlord gave her a job. She says she also lent her money so she would not lose possessions. In a note dated February 24, 2013, the tenant states she is working as a volunteer in the landlord's restaurant to help her regain her confidence. Several receipts signed by the tenant are included showing payments and advances of \$20 to \$100. A receipt from a storage company shows that \$1301.66 was paid and a rental history shows it as owed by the tenant to the landlord. A vehicle registration shows the tenant's vehicle as being owned by a wholesale auto company in December 2012. A letter signed by several tenants lists the problems caused by the tenant and states she left the bed for another tenant, moved up to the living room and had a carpenter who was doing repairs on the house after a flood put a new door between the living room and kitchen, causing great inconvenience to the other tenants.

The tenant claims \$5000 in compensation from the landlord because she said she lost her clothes and other possessions due to his actions, he never kept his promises and would not give her receipts and tried to evict her previously for non payment of rent. She could not specify specific amounts for specific losses in the hearing and had provided no documents to support her claim.

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

Analysis

Order of Possession and Monetary Orders:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord has proved that there is unpaid rent since September 2013 and he is entitled to an Order of Possession effective two days from service. I find his evidence credible as the tenant admitted that she has paid no rent since September 2013; although she maintains she stopped paying for she could not get receipts, I find section 26 of the Act states that a tenant must not withhold rent whether or not the landlord fulfills his obligations under the Act. I find she stopped work in July 2013 so there were no wages from which to deduct rent. Furthermore, I prefer the evidence of the landlord and find it more credible as it is well supported by the documentary evidence in file which illustrates the strained financial circumstances of the tenant. I find the rent owed before rebates is \$1750 (\$350 x 5 months). Although she claims she is living elsewhere, she still has her goods secured on the premises.

I decline to deal with the personal loan amount of \$6000 as this is not within my jurisdiction; however, I find the preponderance of the evidence is that the \$450 payment from the ministry was going towards the loan payment and the tenant was paying her

rent through deductions from her wages until July. The fact that this amount was designated as a shelter allowance from the Ministry has caused some confusion but I find this was the tenant's choice and did not change the agreed upon rent of \$350. I find the landlord's evidence credible as it is supported by the documents, the statements of the parties today and the statement of the landlord in the prior hearing. Although the tenant contended that she was entitled to deductions from rent owing of \$200 due to overpayments of the Ministry in July and August, I find her evidence not credible as the landlord's evidence illustrates that the Ministry payments were going to the other loans she had.

Although it is debatable whether or not the tenant freely gave her bed to another tenant, I find there was a \$25 weekly rebate granted to her for the loss of its use in the prior hearing. Again, while it is debatable whether her unit is secure and whose choice it was for her to occupy the living room, I find she was awarded a \$25 weekly rebate until a solid door was mounted at her entranceway and the testimony today confirms this has not been done. Therefore, based on the prior decision, I find she is entitled to a rebate of \$50 a week from August 12, 2013 to today's date (\$50 x 20 weeks) which is a total of \$1000 to be deducted from the outstanding rent. This leaves a balance of \$750 in outstanding rent.

With respect to the tenant's claim for \$5000, I find she provided insufficient information to prove on the balance of probabilities that any loss she suffered was due to any act or neglect of the landlord. I find insufficient evidence that her peaceful enjoyment was compromised through act or neglect of the landlord and, in any case, she has been awarded a rebate to compensate for the lack of a solid door which has been continued from the prior hearing. I find the preponderance of the evidence suggests the landlord was trying to assist her financially. Even if other repairs were shown to be necessary, which they were not (based on evidence from other tenants), as the tenancy is ended, I find it is moot to order other repairs. Therefore, I dismiss the claims of the tenant in their entirety without leave to reapply.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply.

I find the landlord entitled to a monetary order as calculated below. The security deposit of the tenant will remain in trust to be dealt with in accordance with section 38 of the Act after she has vacated.

Calculation of Monetary Award:

Rent arrears \$350 month from Sept. to Jan. 2014	1750.00
Filing fee for this application	50.00
Less ordered rebates of \$50 a week from Aug. 12	-1000.00
Monetary Order to landlord	800.00

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: January 08, 2014

Residential Tenancy Branch

