



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR ERP RP 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 **two applications** 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 make emergency and other repairs to the property and compensate the tenant for emergency repairs arranged and paid for by the tenant;
- f) Compensation of \$25,000 for problems suffered due to a major rat infestation; and
- g) To recover the filing fee for this application.

SERVICE

The landlord and a male who spoke for the tenant but whose standing is unknown attended the hearing and each confirmed the Notice to End Tenancy dated January 6, 2014 was served personally on the tenant on January 6, 2014. The tenant filed her Application to cancel the Notice on January 13, 2013 and the landlord confirmed receipt of it by registered mail.

The tenant filed a second Application on February 17, 2014 and the landlord said he had received it on February 20, 2014 and did not have time to adequately respond to it by today's hearing. Some documents that the landlord said he filed with the Residential Tenancy Branch have also been misplaced according to him. The landlord served his Application and evidence by registered mail; it was confirmed online that the tenant was notified by the Postal Service but failed to pick up the documents and they were

returned to the sender landlord. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The male participant for the tenant said that he would try to make sure that documents requested through this hearing were picked up by them and said the address on the Application was correct for service.

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, 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 repairs and other losses and to recover filing fees for the application?

Background and Evidence:

The landlord and a male purporting to speak for the tenant 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 October 4, 2013, that rent is \$2100 a month and a security deposit of \$1050 was paid on March 31, 2012. It is undisputed that the tenant has not paid rent for January or February 2014 but made an Application on January 13, 2014 to request emergency repairs be done and to cancel the Notice to End Tenancy for unpaid rent.

A second Application was filed by the tenant on February 17, 2014 to request \$25,000 in compensation. Both parties had not received some documents and requested more time. It was agreed on the telephone to adjourn the hearing of the monetary claim to March 11, 2014 at 10:30a.m. to allow the parties to receive all the evidence and respond. I advised them that the hearing would be mandatory and would proceed whether or not they chose to pick up documents served legally.

This was a very difficult hearing as the male, who is not named as a party on the Application or as a tenant in the signed Residential Tenancy Agreement, was loud and argumentative and accused me of bias when I tried to explain the difficulties of his representing someone without authority and the parts of the Act that were applicable to the situation. I was unable to ascertain from the landlord whether or not he recognized the male as a tenant because the tenant kept interrupting any questions with inappropriate allegations and pressing his needs to the exclusion of the other party. He said he was recording the hearing although I advised him this was not permitted under the Rules of Procedure. He accused me of neglecting the safety of an infant when I

advised him he had no standing to argue the situation of another, unrelated tenant in some other unit. He made it almost impossible to conduct the hearing or for the landlord or his advocate to respond or to set another date. Nevertheless, we concluded the files and portion that related to the unpaid rent and the landlord's request for an Order of Possession.

In evidence is the Notice to End Tenancy for unpaid rent, the Residential Tenancy Agreement, registered mail receipts, photographs of the home, bank drafts from different branches of the Bank of Montreal dated in January or February 2014 and made out in ink to a person who has the same last name as the disputing male who attended. The hand written notations on the bottom of them are all for painting except one for \$350 that says "Haz/Mat Cleanup" which is also made out to the male with the same last name. No business name or receipt for the work is in evidence. In evidence is also a letter from the City dated February 7, 2014 advising the landlord he is in contravention of the Standards of Maintenance Bylaw and noting he is to obtain services of a Pest Control Company and submit a copy of the contract and pest control plan to their attention by March 7, 2014. A number of other deficiencies were noted. The advocate said that the landlord had been given an extension to April, 2014 to comply. A letter from a roofing company dated January 10, 2014 noted rodent problems and said the tenant told them that they were denied permission to do these repairs as the landlord would not give permission.

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

Analysis

Recording of Hearing:

I find that section 9.1 of the *Rules of Procedure* expressly prohibits the private recording of the dispute resolution proceeding. I find any recording of the male of this hearing is in violation of this Rule. I tried to advise the male representing the tenant that he should not be recording the hearing but he refused to listen. He is denied use of this recording in any future proceeding as it was made illegally.

Order of Possession:

I find the weight of the evidence is that there is unpaid rent. The Notice to End Tenancy for unpaid rent showed \$2100 owed as of January 1, 2014 and the male representing the tenant and the landlord confirmed it was served personally on the tenant on January 6, 2014; it is undisputed that the outstanding rent was not paid and rent for February has also not been paid. The tenant did not file her Application until January 13, 2014 (7 days after the Notice was served). I find she was out of time to file a dispute as it must

be filed within 5 days according to section 46(4) of the Act and as advised on the second page of the Notice if the tenant chooses not to pay the outstanding rent. According to section 46(5) of the Act, a tenant who does not pay the outstanding rent or file the Application to dispute the Notice within five days is conclusively presumed to have accepted the tenancy ends on the date set out on the Notice and must vacate the rental suite.

On his file, the landlord applied for an Order of Possession and a Monetary Order. On the tenant's first file, she requested that the Notice to End Tenancy should be set aside and some repairs done. As explained above, I find she was out of time to set aside the Notice and furthermore, I find the landlord entitled to an Order of Possession pursuant to sections 46 and 55; there is unpaid rent and I find the weight of the evidence is that under section 26 of the Act, the tenant had no right to withhold rent. I find it would be unfair and prejudicial to the landlord to withhold an Order of Possession until the monetary hearing on March 11, 2014 as the tenant already owes two months of rent. Furthermore, the delay in proceeding is partially a result of the tenant failing to pick up her registered mail when notified by the Post Office. An Order of Possession is issued to the landlord effective two days from service.

Although the male argued vehemently that a decision should not be made on an Order of Possession because of the rat infestation problem, I find that section 26 of the Act states that a tenant must pay rent when due whether or not the landlord complies with the Act unless the tenant has a right under the Act to deduct part of the rent. I find no right under the Act for the tenant to withhold her rent; I find the receipts submitted by her are mostly for painting which is not defined in section 33 of the Act as an emergency repair.

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. As the parties had not received all the documents, this portion of the matter is adjourned to March 11, 2014 at 10:30a.m. A letter will be sent advising the parties of the telephone codes.

In order to decide this matter, we will require the parties to serve all the requested documents to each other and to disclose to each other the crucial documents.

Conclusion:

The tenancy is at an end. An Order of Possession is issued to the landlord effective two days from service. I dismiss the first Application of the tenant on file #815755 without leave to reapply.

Monetary issues for both parties and the filing fees will be dealt with during the reconvened hearing on March 11, 2013 when the tenant's substantial monetary claim on her second Application will be heard together with the landlord's claim for outstanding rent and submissions on filing fees.

To facilitate the hearing on March 11, 2014, I HEREBY ORDER pursuant to the Rules of Procedure 13.3, that West Side Pest Control give an unedited copy of their report dated January 8, 2014 on this property to the tenant when she attends to collect it and I HEREBY ORDER the landlord to give the necessary consent to release it to her.

As the male participant in the hearing did not disclose his standing to participate in the hearing and his behaviour made it impossible to determine his standing, I HEREBY ORDER pursuant to the Rules of Procedure 10.4 that the tenant named on the tenancy agreement who also brought both Applications either attends the hearing in person or gives notarized authority for this male or someone else to represent her. In absence of this, the hearing on the tenant's application on March 11, 2013 will be dismissed

Pursuant to Rules of Procedure 8.7, I HEREBY NOTIFY the parties that I expect to conduct the hearing on March 11, 2014 at 10:30 a.m. in a respectful, orderly fashion. Any attempt to dominate, interrupt or use abusive, accusatory language will result in the offending party being excluded and the hearing will be conducted in their absence.

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: February 27, 2014

Residential Tenancy Branch

