



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF CNR MNDC OLC

Introduction:

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

- a) An Order of Possession pursuant to Section 46, and 55; and
- b) 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* for orders as follows:

- c) To cancel a Notice to End Tenancy for unpaid rent pursuant to section 46;
- d) A Monetary Order pursuant to section 27 for terminating the facility of hydro resulting in food loss and expenses of eating in restaurants as a result; and
- e) An Order that the landlord comply with the Act and Regulations; and
- f) To recover the filing fee pursuant to section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated March 6, 2014 posted on the door and the Application for Dispute Resolution by personal service. The landlord agreed he received the tenants' Application by personal service. However, he said he only received the evidence from the tenant taped on the door on Saturday March 29 which is deemed to be received on April 1, 2014 (3 days later) and he had no opportunity to prepare a response. I note that this evidence was also received too late in the Residential Tenancy Branch Office. I find that the Applications were legally served according to sections 88 and 89 of the Act but the tenant's evidence was served too late according to Rule 3.5 of the Rules of Procedure.

Preliminary Issue:

The tenant's claim is for compensation of \$5935 for disconnection of hydro and other matters connected with the renovation of the home. No evidence was submitted by the tenant to the Residential Tenancy Branch until March 28 and the landlord is deemed to

have received it on April 1, 2014 as it was posted on his door. I find the landlord's evidence credible that he had no opportunity to adequately respond to the claim as his evidence involves contractors and other estimates. Furthermore, he has a significant monetary claim that he is preparing for an Application. Pursuant to the Rules of Procedure 11.4, I have decided not to accept this late evidence as it would severely prejudice the landlord's opportunity to respond and have a fair hearing.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy for unpaid rent dated March 6, 2014. Has the landlord proved on a balance of probabilities that there is unpaid rent and/or good cause to end this tenancy and that they are now entitled to a Monetary Order and an Order of Possession and to recover the filing fee?

Or is the tenant entitled to any relief from the Notice to End Tenancy? Has the tenant proved on the balance of probabilities that the landlord caused through act or neglect their electricity to be cut off and if so, to how much compensation have they proved entitlement? Are they entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in 2005, no security deposit was paid and rent is currently \$1085 a month. It is undisputed that the tenant owes \$1085 rent for March 2014 and has not paid April rent yet.

The tenant said they were without hydro for approximately 16 days and incurred costs of spoiled food and eating in restaurants. Because of this, the tenant said they could not afford to pay rent for March 2014. The tenant provided no invoices to support the costs they incurred.

The landlord said the hydro had been disconnected for he did not have the funds to pay the bill when the tenant did not pay him monies that they had promised. As a result, he had to take a second mortgage and pay the hydro with all the penalties.

The landlord is claiming the rental arrears of \$1085 for March 2014 and an Order of Possession. He submitted that the tenant has no legal right to withhold the rent even if there were problems with hydro.

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 that the landlord is entitled to an Order of Possession. There is outstanding rent. Although the Tenant made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy, I find they withheld the rent for March 2014 contrary to section 26 of the Act which states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the weight of the evidence is that the tenant had no right to deduct rent as this was not a situation of an emergency repair as outlined in section 33 of the Act. Therefore, I find the landlord entitled to an Order of Possession. The landlord agreed that the Order might be effective on April 30, 2014 to allow the tenants time to move.

Monetary Order

I find that there are rental arrears in the amount of \$1085.00 for March 2014. I find the landlord entitled to a monetary order for \$1085 plus the filing fee. The Application of the tenant for compensation for lack of hydro and other matters is dismissed with leave to reapply. The landlord indicated he also has an Application for compensation for damages which he intends to file. I notify the parties that Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Conclusion:

I find the landlord is entitled to an Order of Possession effective April 30, 2014 as agreed and a monetary order as calculated below including recovery of filing fees paid for this application. I give the landlord leave to reapply for further rental losses and other damages.

I dismiss the Application of the tenants and give them leave to reapply. Keeping in mind what they must prove as set out above, I caution them to file the evidence and serve it in time to the landlord and preferably as soon as possible. I find them not entitled to recover the filing fee for this Application as it did not succeed partly because they filed and served the evidence too late to be considered.

Calculation of Monetary Award:

Rent arrears March 2014	1085.00
Filing fee	50.00
Total Monetary Order to Landlord	1135.00

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: April 02, 2014

Residential Tenancy Branch

