



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR OPC RP 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/or an Order of Possession pursuant to sections 47 and 55 for repeated late payment of rent; 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 Notices to End Tenancy for unpaid rent and/or for cause of repeated late payment of rent;
- e) An order pursuant to sections 32 and 33 that the landlord do necessary repairs to the heat and bathroom; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant confirmed receipt of the Notices to End Tenancy, the ten day Notice and one month Notice both dated April 2, 2014 posted on the door 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. As explained in the hearing, the effective date on the one month Notice is automatically corrected to May 31, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed pursuant to section 46; and/or that there has been persistent late payment of rent so they are

entitled to an Order of Possession and a monetary order for rental arrears and recovery of the filing fee for this application?

Or has the tenant demonstrated that either or both of the Notices to End Tenancy should be set aside and that the landlord should be ordered to repair the suite? Is the tenant entitled to recover filing fees for their application?

Preliminary Issue:

The female tenant said that her name on the Application is incorrect as she has reverted to her maiden name and told the landlord. However, I find the lease is in her former married name and both Notices to End Tenancy are in her former name and there is no evidence provided of a legal name change. Therefore in the Decision and Orders, for legal reasons of enforcement, I shall use her married name and note she is also known (a.k.a.) by her maiden name.

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 September 1, 2010, that rent is \$785 a month inclusive of heat and a security deposit of \$392.50 and a hydro deposit of \$100 was paid. It is undisputed that the tenant did not pay April 2014 rent until April 7 (part payment) and April 12 (the remainder). The tenants filed their Application to set aside the Notices to End Tenancy on April 9, 2014 which is within the time limit set out in section 46.

The landlord gave evidence of persistent late payment of rent. She read from her ledger the history of many partial payments that took place in 2011 in the months of June, August, and Sept. In 2012, she noted June and December were late and in 2013, the months of February, April, May and December showed late payments. In September 2013, the tenants were given a 10 day Notice to End Tenancy for unpaid rent and in January, February, and March of 2014, they were given 10 day Notices. She noted they were again late and made partial payments in April 2014 which resulted in the ten day Notice which is one of the Notices disputed in the Application by the tenant.

The tenants contended that the landlord wanted cash and collected it at the door for the first years and sometimes they came too late and the tenants had to get up early. They said they had the cash for rent but the collection was erratic so it was the collection of the landlord that was late and not their payments. They contended that it was never a problem until they wrote a letter in support of another tenant's complaints.

On December 15, 2013, the landlord gave all the tenants notice that the rent was to be sent to an address with a PO Box number and that it was to be on time and sent by courier if necessary. The landlord noted the tenants' envelope with January rent was date stamped January 4, 2014 so it was late and again in March, it was mailed on March 3, 2014. The landlord also pointed out the many partial payments as evidence that the tenants were not offering the rent in cash on time when it was collected.

On the tenants' Application, they request repair of a broken toilet seat, a bathroom and the heating system. They said they never had sufficient heat in the unit and it never rises above 17 degrees Celsius which is cold. Two other tenants wrote letters to support the problems with the heat. They said they informed the landlord by text message but the earliest text they mentioned was made mid March 2014. They enclosed many text messages but they are all dated April 10, 2014 when the female tenant forwarded them to herself so it was not possible to ascertain how long the tenants waited for a response from when they made the complaint. They said the landlord sent another plumber tenant to look at the problem, he put in new baseboard heaters but the situation did not change so he thought there must be a blockage which only could be fixed by cutting into the walls. They said they texted about the toilet seat and bathroom in February 2014 and it was fixed in a few days by another tenant. Another problem with the bathroom was a stench and a person was sent to investigate it and some demolition was done which may have revealed some mould; apparently it was not finished and he went to the island for a few days. The landlord provided two invoices from this repair person dated February 19th and 26th, 2014 for bathroom repairs. The male tenant said he had paid for things out of his own pocket for the unit from time to time but he provided no invoices for emergency or other repairs in evidence.

Both parties said they had submitted more evidence to the Residential Tenancy Branch which was not included in their files. The evidence was received by May 5, 2014 and was considered for this Decision.

In evidence are the Notices to End Tenancy for unpaid rent and for cause, the lease, text messages, the ledger, copies of other Notices to End Tenancy and letters.

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

Analysis:

Order of Possession:

The onus is on the landlord to prove on a balance of probabilities that they are entitled to an Order of Possession. Section 46 of the Act provides that a tenant has five days from service of the Notice to either pay the rent or file an Application to dispute. The 10 day Notice to End Tenancy was served April 2 on the door and is deemed to be received on April 5, 2014; the tenant did not pay the outstanding rent in full until April 12, 2014 which is too late to make the Notice of no effect under section 46(4)(a).

In respect to the one month Notice to End Tenancy for the cause of repeated late payment of rent, I find the weight of the evidence is that the tenants have been repeatedly late in paying their rent since 2011. Although they argued that it was the collection that was late or erratic, I find the landlord's evidence credible that the tenants often made partial payments which is inconsistent with them having their rent available in cash at the beginning of the month for collection. I find the landlord's evidence well supported by her ledger showing payments and dates and also by the fact that several Notices to End Tenancy were issued to the tenant. Based on the weight of the evidence, I find the landlord entitled to an Order of Possession effective May 31, 2014.

On the tenant's application, the onus is on them to prove on the balance of probabilities that the landlord through act or neglect has caused them problems which need to be remedied. I find the weight of the evidence is that they did not inform the landlord of a heating problem until March 2014 and the landlord since then has been attempting to have a repair made including new baseboard heaters and thermostat but it is a complicated issue. As the tenant said in the hearing, the warmer weather has come and there is not much point now; also, the tenants will be vacating under the Order of Possession so I find it unnecessary to order repair to the heating system for them at this stage. I also find the weight of the evidence is that the landlord has hired personnel and diligently addressed the bathroom issues in February 2014 according to the invoices in evidence so I decline to order further repair. The text messages did not indicate that the landlords had failed to respond to repair requests within a reasonable time.

I find therefore there is insufficient evidence that the landlord has through act or neglect caused problems for the tenants or devalued the tenancy. I dismiss the Application of the tenants to repair the unit. As explained to the tenants in the hearing, even if the landlord is not fulfilling their obligations, section 26 of the Act states a tenant must pay the rent when due under the lease agreement and they failed to do so.

Conclusion:

I dismiss the application of the tenants in its entirety without leave to reapply and I find they are not entitled to recover filing fees for the application.

I find the landlord entitled to an Order of Possession effective May 31, 2014 and to recover filing fees for this application. The \$50 filing fee may be recovered by deducting it from the tenants' security deposit which will leave \$342.50 in trust for the tenant (plus their hydro deposit) to be dealt with under section 38 of the Act when the tenants have vacated.

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: May 06, 2014

Residential Tenancy Branch

