



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF

Introduction:

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

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant to cancel a Notice to End Tenancy for unpaid rent pursuant to section 46 and to recover the filing fee for this application pursuant to section 72.

SERVICE:

The tenant did not attend. The landlord gave sworn testimony that the Notice to end Tenancy dated April 18, 2014 was served personally to the tenants and the Application for Dispute Resolution personally with a witness in attendance. She stated the tenants served her with their Application by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated April 18, 2014 for unpaid rent. The tenant applied to have the Notice set aside on April 23, 2014. Has the landlord proved on a balance of probabilities that there is unpaid, rent and they are entitled to an Order of Possession and a Monetary Order for rental arrears and filing fee; or is the tenant entitled to any relief?

Background and Evidence:

The tenant did not attend although served with the Application/Notice of Hearing and filing an Application with their Notice of Hearing set for the same time. The landlord said they told her they were moving and not planning to attend the hearing. The

landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord testified that tenancy commenced on March 1, 2014 on a fixed term lease to February 29, 2015, rent was \$1850 and there is no security deposit as the tenants' cheque for \$1000 was returned NSF. The landlord testified that the tenant is in rent arrears from March 1, to the present. Of the \$7400 owed (\$1850x4 months), they paid only \$500 in cash. She thinks they paid some of the utilities but does not know how much is owed in utilities.

In evidence is proof of service, the Notice to End Tenancy, the NSF cheque, a tenancy agreement and a utility bill. The tenants said on their application that March rent had been waived due to construction and they offered \$1350 in cash which the landlord refused; the landlord denies these allegations. On the basis of the 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, they did not attend the hearing to support their allegations and they still would owe rent even if the allegations were correct. An Order of Possession is issued effective two days from service.

Monetary Order

I find that there are rental arrears in the amount of \$6800 representing rental arrears to June 30, 2014 (\$7400 - \$500 paid in cash in early April). However, the landlord claimed only \$5000 on her application. According to the Principles of Natural Justice, a party must be informed of the full monetary claim against them. I find therefore the landlord is limited to a monetary order for \$5000 plus filing fee and I give her leave to reapply for the further \$1800 in rental loss plus other rental or utility loss incurred due to the breach of this fixed term lease plus any damages caused by the tenant. Any further application must be within the legislated timelines.

I find insufficient evidence to support the tenants' application. Although they said they offered rent in cash which was refused and that there was a verbal agreement to waive rent for March, they provided no documents to support their claim and did not attend the hearing to provide oral evidence. Therefore I dismiss their application.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing

fees paid for this application. I give the landlord leave to reapply within the legislated time limits for excess rental loss of \$1800 owed to June 30, 2014 plus further rental losses due to the breach of the fixed term tenancy agreement plus damages and any utility costs.

The landlord is advised of her duty to mitigate rental losses and damages by making diligent efforts to re-rent as soon as possible after the tenants vacate.

I dismiss the application of the tenant in its entirety and find them not entitled to recover filing fees due to lack of success.

Calculation of Monetary Award:

Rent arrears and loss to June 30, 2014	6800.00
Filing fee	50.00
Total Monetary Order limited to \$5050 to Landlord due to Application;	6850.00

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: June 12, 2014

Residential Tenancy Branch

