



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR CNR CNC 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 or 47 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) 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:

- e) To grant the tenant more time to file both of her Applications to dispute the both Notices to End Tenancy;
- f) To cancel the Notices to End Tenancy for unpaid rent and/or for cause;
- g) A monetary order or rent rebate as compensation for repairs to the property; and
- h) To recover the filing fee for this application.

### **SERVICE**

The tenant did not attend the hearing but her representative attended the hearing and confirmed receipt of the Notices to End Tenancy, one dated April 28 (served April 30<sup>th</sup> by posting it on the door) and the second dated April 1 also posted on the door. Both parties confirmed receipt 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 unpaid or that they have sufficient cause to end the tenancy and that 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 is the tenant entitled to any relief? Has the tenant demonstrated that they are entitled to compensation for repairs not done and to recover filing fees for the application?

**Preliminary Issue:**

The tenant's friend attended the hearing and requested an adjournment for the tenant was ill with stomach flu. The landlord opposed the adjournment as she said the tenant was fine last evening and is just delaying the matter. The tenant received her one month Notice to End Tenancy on April 30, 2014 and filed her Application to dispute on May 20, 2014 which is 5 days too late according to section 47 of the Act. Her Notice to End Tenancy for unpaid rent was posted on her door on June 1 (deemed receipt June 4). She did not pay the outstanding rent within 5 days and filed her Application to dispute it on June 27, 2014 which is 18 days too late according to section 46 of the Act. Since both Applications were filed too late according to the legislation, I decline to give her more time to file them and hereby dismiss both of the tenant's Applications to dispute the Notices to End Tenancy.

In respect to the request for an adjournment to hear the landlord's Application, I find Rule 6.4 of the Residential Tenancy Branch Rules of Procedure sets out criteria. In this case, there was no consent to reschedule, the tenant did not send a request to the Residential Tenancy Branch ahead of time, an agent attended but knew nothing of the matter she said and the tenant was in the unit but refused to either listen or respond because the agent said she was ill. I find the oral submission of the agent is not credible and I prefer the evidence of the landlord that the tenant is using a delaying tactic as the landlord testified the tenant was fine the evening before and the tenant was in the unit and would not participate in the hearing although she had a friend to assist her and the hearing was by teleconference. The tenant appears to have neglected time lines in respect to filing of her Applications which has already resulted in considerable prejudice to the landlord. Therefore, I refuse the tenant's request to adjourn the hearing; it will cause the landlord to suffer further prejudice; the tenant has had notice of the hearing since July 3, 2014 and had the opportunity to provide an agent who knew the facts to represent her if she felt unwell.

**Background and Evidence:**

The landlord was given opportunity to be heard, to present evidence and to make submissions. The tenant did not want to participate. It is undisputed that the tenancy commenced on April 1, 2014, that rent is \$1100 a month and a security deposit of \$550 was paid on April 1, 2014. It is undisputed that the tenant did not pay rent for June

2014 until almost the end of June and made an Application on June 27, 2014 to request rent rebate for repairs and to cancel the Notice to End Tenancy for unpaid rent.

The landlord also served a Notice to End Tenancy for cause. The cause was a breach of a "No Smoking" term of the lease by the tenant and the smoking of marijuana unreasonably disturbing the landlord, jeopardizing the health and safety of other occupants and adversely affecting their quiet enjoyment and physical wellbeing. She provided a very detailed log of the times of the smoking and how it is affecting her health and ability to work. The tenant denied it when confronted and the landlord had an RCMP officer visit and confirm the smell. She provided a letter from a friend who said she suffered an allergic reaction while visiting the landlord and could not drive for an hour afterward as she felt impaired. The landlord's son stated he smelt the marijuana while his mother was absent and this was the first time in four years that his mother has had a tenant that did this.

In evidence are two Notices to End Tenancy, the lease agreement, warning letters to the tenant for her to stop smoking as it is in breach of the lease and several emails between the parties regarding repairs and mail delivery.

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

**Analysis:**

I find that the landlord is entitled to an Order of Possession. The Tenant did not pay the outstanding rent within 5 days of service of the Notice to End Tenancy and did not make application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy until the time to do so had expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

In respect to the Notice to End Tenancy for cause, I find the landlord has proved on the balance of probabilities that she has good cause to end the tenancy. I find the weight of the evidence supports the landlord's sworn testimony of the breach of the lease and continuation of the behaviour even after a warning. I find the landlord is entitled to an Order of Possession on this ground also.

**Monetary Order:**

The onus is on an applicant to prove on a balance of probabilities their claim. I find the landlord received rent for June late in June. Although the landlord claims in the lease \$25 a day as late fees, I find the Residential Tenancy Regulation section 7(1) (d) limits the late fee to \$25 for a late payment of rent. I find the landlord entitled to recover \$25 for late payment of rent in June 2014. The landlord notes that the tenant has not paid rent for July yet. I give the landlord leave to reapply for further amounts owing to her.

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim that repairs were not done and she is entitled to a rebate of rent. I find insufficient evidence to support her claim. She provided no letters requesting the landlord to do repairs and evidence they were not completed. Although she said she would 'fax' all the evidence, none was received. On the other hand, the landlord provided some emails of requests from the tenant for repair and showing a timely response by her. For example, she requests a plumbing repair and the landlord sends a plumber within an hour and the tenant responds thanking her for 'the quick service' and saying all is fixed. Again, the tenant texts the basement is cold and the landlord texts back that she is turning up the heat. I dismiss the application of the tenant for a rebate of rent as I find insufficient evidence to support her claim.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for his application.

I find the landlord entitled to a monetary order for \$75 (\$25 late fee and \$50 filing fee). I give the landlord leave to reapply within the legislated time limits for further amounts owed to her. As requested by the landlord, the tenant's security deposit will not be used to offset the amount owing but will remain in trust until the tenant vacates.

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: July 14, 2014

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**Residential Tenancy Branch**

