



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR 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 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee of \$100 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 cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for repairs to the property, loss of wages, loss of peaceful enjoyment and harassment, fraudulent dealings by the landlord and release of personal information; and
- g) An order that the landlord comply with the Act.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated June 8, 2014 by registered mail. The landlord gave sworn testimony that their Application for Dispute Resolution was served by registered mail; the tenant said she did not open it for she did not recognize the landlord's agent's name. The landlord confirmed receipt of the tenant's Application. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. Although the tenant said she did not open the registered mail, I find it was legally served on her.

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 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 she proved on the balance of probabilities that she is entitled to compensation from the landlord for repairs to the property, loss of wages, loss of peaceful enjoyment and harassment, fraudulent dealings by the landlord and release of personal information? Is she entitled to recover filing fees of \$100 for the application?

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 on March 1, 2014, that rent is \$1600 a month plus 60% of utilities and a security deposit of \$800 was paid in March 2014. It is undisputed that the tenant has not paid rent for April to August 2014, although she said she made many attempts to do so. The agent said she had gone to the bank today to attempt to cash the cheques for June and July; they were refused. She also verified that no rent had been paid into the account another way for the months claimed. There are two brothers who are landlords but one J. C. is very ill and is not to be contacted by tenants and the other is overseas so she acts as authorized agent. The tenant alleges that the J. R. has caused her serious problems and she got an email from the agent saying she is not to contact him. The landlord claims as follows:

Rent arrears:

\$1509.40 April rent (has deduction of \$50 for previous filing fee awarded to tenant)

\$1759.40 for each of May and June

Rental loss:

\$1759.40 for each of July and August 2014.

A Notice to End Tenancy dated March 17, 2014 was issued for unpaid rent in March but in a prior decision under file # 819759, it was found that the tenant had paid the outstanding rent within 5 days of deemed receipt of the Notice so the Notice to End Tenancy was cancelled and the tenant was awarded \$50 for filing fee to be deducted from her rent.

The tenant submitted many of her own statements concerning her problems with this tenancy but no copies of cashed cheques or other information that contradicted the landlord's information. She said she had given cheques to the downstairs tenant for rent for June and July to be given to the landlord. In her written statements, she said she was going to have her lawyer pay the rent but no other evidence of this was provided. The landlord said the cheques could not be cashed as the dates had been changed but not initialled as verified again today in the bank. The tenant said she did not change dates of months, only one number date which she initialled and the other dates must have been changed by someone else. She referred me to copies in

evidence but I find none of them in evidence. She said J.R. had asked the bank for a letter saying they were not cashable but the manager said they could not give such a letter. She alleges the landlord has damaged her reputation with the bank, hurt her family's reputation and caused her extreme stress. She claims \$4000 which is half the rent from March to July 31, 2014 when she says she vacated.

The tenant said she has a massive court case in the Supreme Court relating to a previous landlord's harassment as she claims this previous landlord is calling other landlords and blacklisting her. She said J.R. the current landlord wanted her out within a week and he had bailiffs calling and harassing her. She said she vacated on July 31, 2014 and the keys and garage door open are in the kitchen. She said she gave no written notice but left a voice mail for the landlord and confirms the landlord can take possession today.

She said she sent many emails but none are in evidence. She is seriously ill and her son had to vacate the unit because of the harassment from bailiffs from this landlord and previous landlords. The agent said that it must have been from her prior landlords as they have not hired bailiffs as they have no orders to enforce.

In evidence is the Notice to End Tenancy for unpaid rent, registered mail receipts, proof of service by the landlord, a rental ledger by the landlord and many typewritten statements by the tenant and some photographs.

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 an Application, it is dated May 26, 2014, prior to the issuance of the Notice to End Tenancy, and states it relates to her monetary claims as a follow up to her previous hearing in May. She has not made application pursuant to Section 46 to set aside this Notice to End a Residential Tenancy and the time to do so has 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 immediately as the tenant said she has vacated and the landlord wants to take possession immediately. Although the tenant urged me not to issue the Order of Possession, I find the landlord is legally entitled to the Order and has requested it so it is issued.

Monetary Order

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord satisfied the onus. The tenant did not deny the amounts of rent outstanding. I also find the rental ledger supports the landlord's claim. I find that there are rental arrears in the amount of \$5028.20 representing rental and utility arrears from April to June 30, 2014. I find further the landlord is entitled to recover rental loss for July and August 2014 in the amount of \$3518.80. Although the tenant states she has vacated and left a voice mail message, I find she did not provide legal notice to end her tenancy which is required to be in writing according to section 52 of the Act. Furthermore, I find the landlord, K.C., was out of the country and not getting his messages. I find the landlord may retain the security deposit to offset the amount owing.

Monetary Order:

On the tenant's application, the onus is on her to prove on a balance of probabilities her claim. Although the tenant claims she suffered and was uncomfortable 24 hours a day because she was not able to contact the landlord, not able to pay her rent, could not clean her vents properly, was subject to harassment from this landlord and prior landlords with fake people coming to her home and she has to fight to protect her reputation, I find insufficient evidence to support her allegations. I find the landlord's evidence more credible that she attached a letter to the Ten Day Notice informing the tenant on June 8, 2014 that she was managing the property and giving contact information. The tenant said she did not open this envelope but I find she was served legally with it and it is not the landlord's fault that she did not open this communication. I also find the tenant's statement inconsistent with another of her statements where she states she got email from this agent requesting her not to contact J.C. who is ill or K. C. who is out of the country. I find it most likely that from this, she must have obtained the agent's email contact information.

I find further that she has not paid rent for 4 of the 5 months that she has allegedly lived in the unit so I find a refund of rent is not applicable. Regarding her claim for compensation for various events which she claimed were harassment, I find insufficient evidence to support her allegations. I find it just as probable that any bailiffs attending her residence were from previous landlords who she states are claiming money from her and against whom she has a case in Supreme Court. I find insufficient evidence to support her allegations that her son had to leave home because of this landlord's actions or that her ill health or wage loss resulted from the landlord's actions. I also find insufficient evidence of any repairs she made or costs of such repairs.

I find the photographs and other statements by the tenant on some late evidence relate to the condition in which she left the property; this is not in dispute by the landlord at this time; there is no application for damages to the property so I decline to consider this late evidence.

Conclusion:

I find the landlord entitled to an Order of Possession effective immediately as the tenant states she has vacated. I find the landlord entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord entitled to recover filing fees of \$100 for this application.

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.

Calculation of Monetary Award:

Rental/utility arrears April to June 30, 2014	5028.20
Rental/utility loss July to August 31, 2014	3518.80
Filing fee for this application	100.00
Less security deposit (no interest 2014)	-800.00
Total Monetary Order to Landlord	7847.00

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: August 05, 2014

Residential Tenancy Branch

