

Dispute Resolution Services

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.

SERVICE:

The tenant attended and agreed that the Notice to end Tenancy dated June 3, 2014 was served personally on an adult guest at her home and the Application for Dispute Resolution in the same way. 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 June 3, 2014 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The tenant attended and both parties were given opportunity to be heard, to present evidence and to make submissions. The landlord testified that tenancy commenced on April 1, 2014, rent is \$1000 a month and a security deposit was not paid. He states the tenant owes rent from April to August 2014(\$5,000), utilities of \$520 and a cleanup fee of \$400. He said the grounds were cleaned up before the tenancy began but he got a notice from the city and had to pay \$400 to get a cleanup done again. The landlord has submitted no rental records or receipts as evidence. To complicate matters, he is acting for the owner of the home and the tenant claims she made many payments to the owner.

There is no written tenancy agreement but both parties agreed that rent was to be \$1,000 a month and the tenant was to be reimbursed for the amount she spent on renovation materials. The tenant said she was to be reimbursed for labour also but the landlord disagreed. The tenant said that utilities were supposed to be included but then the landlord decided he was going to charge \$150 a month for them. She said she paid \$300 in February 2014 and \$1200 in March 2014 to the owner of the home and she had a witness to the payments. She said she also paid \$2700 for renovation materials and was reimbursed only \$700. The landlord said the bills for materials totalled \$1293.65 and he paid \$700 of this in April 2014. She admitted that she owed about \$4,000 for rent but said the landlord owes her \$2,000 plus labour. She said the landlord gave her a letter saying he proposed to sell the house and offering her a free month of rent. She did not provide copies of the letter and provided no receipts or bills to support her statements. She had other complaints regarding the tenancy and behaviour of the landlord and was advised to make her own application with evidence.

In evidence is the Notice to End Tenancy.

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

<u>Analysis</u>

Order of Possession

I find that the landlord is entitled to an Order of Possession. I find there is outstanding rent as both parties agreed rent owed. The Tenant has not made application pursuant to Section 46 to set aside the 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 two days from service.

Monetary Order

The onus is on the landlord to prove on the balance of probabilities that the tenant owes rent and how much is owed. I find that there are rental arrears (as agreed) but am unable to determine the amount from the information provided. The landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent. To complicate matters, I find that some payments may have been made to the owner of the home who was not present in the hearing. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that she made more payments than the landlord has recorded or stated today. I find insufficient information to satisfy the onus. I dismiss the claim of the landlord for a monetary order and give him leave to reapply.

The tenant indicated her desire to make an Application and was advised to do so with evidence to support it and to request that both her Application and the landlord's reapplication be heard at the same time.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service. I dismiss his claim for a monetary order and give him leave to reapply. I find the landlord is entitled to recover filing fees paid for this application and I authorize him to add the \$50 filing fee when he reapplies for a monetary order for unpaid rent and/or damages.

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 08, 2014

Residential Tenancy Branch