



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR OPC CNR 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 cancel Notices to End Tenancy for unpaid rent and for cause;
- f) A monetary order or rent rebate as compensation for repairs to the property;  
and
- g) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of the Notices to End Tenancy, one dated June 15, 2014 for unpaid rent served by posting it on the door and the other dated June 17, 2014 for cause 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.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent is owed or that there is good cause to end the tenancy? Are 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 proved on the balance of probabilities that she is entitled to a rent rebate for there was a withdrawal of the facilities of heat and hot water, that the landlord interferes with her mail delivery and

peaceful enjoyment and that requested repairs had not been done. Has she also proved that she is entitled to compensation for a new rug?

**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 July 1, 2009, in April 2012, and a security deposit of \$260 was paid. There was dispute as to the rental amount; the tenant said it was \$550 a month and the landlord said it was \$525. The tenancy agreement provided in evidence states it is \$525 payable on the 30<sup>th</sup> of each month (the landlord said it was payable the last day of the month which sometimes was the 31<sup>st</sup>). When served the 10 day Notice to End Tenancy for unpaid rent, the tenant agreed that she had not paid the balance of \$200 for June 2014. The landlord testified that she paid the \$200 on June 27, 2014, then paid \$500 rent for July by July 28, 2014 and has paid \$250 of the rent owed for August. Since serving the Notice to End Tenancy the landlord has marked receipts "for use and occupancy only" and does not want to reinstate the tenancy. They request an Order of Possession and a monetary order for rental arrears and to retain the security deposit to offset the amount owing.

The tenant was upset with the landlord. She stated that the Notices to End Tenancy were only served on her when she filed her Application on June 16, 2014 to get repairs done. However, her Application filed on June 16, 2014 is to cancel the Notices to End Tenancy and to also do repairs and compensate her for the rug she provided. The tenant said she always paid her rent on time, and even ahead, but she is on medical benefits at the moment. She said she put down the new rug three years ago and the landlord reduced her rent from \$550 to \$500 to compensate her for the rug. The landlord denied this and said her rent was \$525 but was reduced when she was having some financial issues. The landlord said the house is only 5 years old so they did not believe a new rug was necessary.

The tenant also complained of lack of heat and hot water and repairs not being done, for example to a running toilet. She said she was cold and the heat had first been turned off on April 1, 2014, then turned back on and then off again on May 15, 2014. The landlord denied that they interfered with the tenant's heat. They said she had a thermostat to control it and often left her windows open. They also said that the hot water serves the whole home and they never turned it off. They said the tenant had never requested in writing that any repairs be done and in fact denied access for them to enter the suite with a plumber. They said she had borrowed the second key to the suite and never returned it but had made false accusations to the police that they were entering her suite illegally. They said they put her mail where she requested it,

underneath an ornament near her door. The landlord said that the tenant has seriously interfered with their peaceful enjoyment and caused enormous stress for them with her demands and allegations.

The tenant said she did not make repair requests in writing as they were “like family” and when she asked about repairs, the landlord said they could not afford it. She said that the landlord would not give receipts. The landlord denies this and says they gave receipts when requested. Some copies of receipts are in evidence. The tenant provided photographs of alleged disrepair showing for example, a spider in a bathtub, an outside drain, a thermostat set at 20 Celsius, an electric heater, some damaged woodwork in cupboards etc., outside cracks in cement and a toilet handle

In evidence are two Notices to End Tenancy, one for unpaid rent and one for cause, letters and statements from both applicants, rent receipts, and the tenancy agreement..

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

### **Analysis**

#### **Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord satisfied the onus of proving that the tenant did not pay her June rent within 5 days of receiving the Notice to End Tenancy as she received the notice on June 17 posted on her door (deemed receipt June 20) and did not pay the balance until June 27, 2014. I find the landlord in accepting further rent payments was careful to not reinstate the tenancy by limiting the receipt “for use and occupancy only”. I find further that she has been repeatedly late in paying her rent; the tenant explained that it is agreed that she pays it in two equal payments but I find the tenancy agreement states it is payable in full at the end of each month. Although there have been unfortunate financial issues, I find the weight of the evidence is that the rent has been paid late on numerous occasions. For both of the above reasons, I find the landlord entitled to an Order of Possession. The tenant demanded 3 months notice in the hearing; she did not appear to understand her tenancy ended at the end of June as per the 10 day Notice. The landlord consented to have the Order of Possession effective September 15, 2014 to allow her time to organize her affairs. I find the landlord also entitled to a monetary order for \$250 for the balance of August rent.

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim. I find that the tenant insufficient evidence the tenant requested repairs verbally or in writing; I find the landlord's evidence credible that she was denying access to the suite as it is supported by police complaints and other statements. I find the landlord's evidence credible that the tenant was not denied heat or hot water as she had her own thermostat and the hot water serves the whole building. I find her photographs do not show a suite in chronic disrepair; I find she had difficulty providing access to the plumber to fix the toilet which I find is not the landlord's fault or neglect. In the matter of the rug replacement, I find the tenant's evidence inconsistent as she said the landlord reduced her rent to compensate for the rug from \$550 to \$500; the rug was put down three years ago so this would mean she was compensated 36months x \$50 or \$1800. Although questioned on this, she did not clarify it. I find the landlord's evidence more credible that the house was new 5 years ago, rent was \$525, no rug was required but they reduced her rent to \$500 as she was having some difficulties financially; this evidence is more credible as it is consistent with the tenancy agreement and receipts provided. I dismiss the application of the tenant as I find insufficient evidence to support her claims.

### **Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply.

I find the landlord entitled to an Order of Possession and a monetary order as calculated below. I find she is entitled to retain the security deposit to offset the amount owing and to recover filing fees for her application.

### Calculation of Monetary Award:

August 2014 balance of rent	250.00
Filing fee	50.00
Less security deposit (no interest 2009-14)	-260.00
Monetary Order to Landlord	40.00

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 11, 2014

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Residential Tenancy Branch

