



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPR

Introduction

This is a request for an Order of Possession based on a Notice to end Tenancy for nonpayment of rent, a request for a Monetary Order for \$2290.00, and a request for recovery of the \$50.00 filing fee. The applicant is also requesting an Order to keep the full security deposit towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all **relevant** evidence, and to give oral testimony.

All testimony was taken under affirmation.

Issue(s) to be Decided

Does the applicant have the right to an Order of Possession?

Has the applicants established a monetary claim against the respondent, and if so in what amount?

Background and Evidence

The applicant testified that:

- This tenancy began on November 15, 2011 with a monthly rent of \$750.00 and a security deposit of \$250.00 was collected.
- The tenant stopped paying the rent as of July 2014 and therefore on July 18, 2014 she was served with a 10 day Notice to End Tenancy.

- To date the tenant has not complied with that that notice and has failed to pay any further rent.
- The tenant also used an extra parking space and therefore she is asking for \$40.00 for that parking space.
- There was no written agreement for the tenant to pay for extra parking.
- She is therefore requesting an Order of Possession for a soon as possible and a Monetary Order as follows:

Extra parking fee	\$40.00
July 2014 rent outstanding	\$750.00
August 2014 rent outstanding	\$750.00
September 2014 rent outstanding	\$750.00
Filing fee	\$50.00
Total	\$2340.00

The respondent testified that:

- She never agreed to pay for any extra parking and therefore does not believe she should have to pay a parking fee.
- She has withheld the July 2014, August 2014, and September 2014 rent's because of numerous deficiencies and health issues in the rental unit.
- She has not applied for dispute resolution to get an Order for the landlord to do repairs, nor has she applied for dispute resolution to dispute the Notice to end Tenancy.

Analysis

The Residential Tenancy Act does not allow the tenant to withhold rent unilaterally.

Before a tenant can withhold rent the tenant must apply for dispute resolution and get an Order of an Arbitrator allowing them to do so, and if the tenant fails to do so the landlord has the right to end the tenancy for nonpayment of rent.

Further, the tenant has not filed a dispute of the Notice to end Tenancy that she received in July 2014 and therefore pursuant to Section 46 of the Residential Tenancy Act, the tenant is conclusively presumed to have accepted the end of the tenancy.

I therefore allow the landlord's request for an Order of Possession and an order for the \$2250.00 in outstanding rent.

I also allow the request for recovery of the \$50.00 filing fee

I will not allow the claim for \$40.00 for an extra parking spot, as the landlord is provided no evidence that there was ever an agreement for the tenant to pay extra parking.

Conclusion

I have allowed \$2300.00 of the landlords claim and I therefore Order that the landlord may retain the full security deposit of \$250.00 and I have issued a Monetary Order for the respondent to pay \$2050.00 to the applicant.

I have issued an Order of Possession that is enforceable two days after service on the respondent.

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: September 29, 2014

Residential Tenancy Branch

