



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/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 the Notices to End Tenancy for unpaid rent and for cause;
- f) A monetary order or rent rebate as compensation for lack of repair and repairs to the property and lack of hot water for 4 weeks in total; and
- g) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the landlord provided proof of service of the Notice to End Tenancy dated August 2, 2014 and service of their Application for Dispute Resolution by registered mail. It was verified online that delivery was attempted and a Notice was left on September 29, 2014 but the tenants failed to pick it up by October 8, 2014. The tenants contended they had already vacated the unit by September 27, 2014 but said there were some items left which they continued to pick up and they had not provided a forwarding address to the post office. The landlord testified that he saw a cart for moving at the home on September 30, 2014 and a Notice indicating there was a guard dog on duty and he heard the dogs inside the home. I find the weight of the evidence is that the tenants should have seen the Notice on the door as they were going back and forth whether or not they were still actually staying there. I find they are deemed to be served with the landlord's application. The landlord agreed he got the tenants' Application. 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 and/or that they have good cause to end the tenancy and 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 they are entitled to compensation for repairs, or for repairs not done contrary to sections 32 and 33 of the Act and to recover filing fees 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. This was a cross application involving many complex issues between the parties such as damage to the home, whether services were provided, allegations of aggressive behaviour, personal injury and other matters. Therefore, I limited the hearing to the most urgent and relevant issues concerning the Notice to End Tenancy and the unpaid rent and assured the parties they would have leave to reapply for further monetary claims. I advised them to ensure they had all relevant evidence including invoices and other proof to support any monetary claim against each other.

It is undisputed that the tenancy commenced in November 1, 2010 in another unit in the complex, that rent is \$950 a month and a security deposit and pet damage deposit totalling \$950 was paid on November 1, 2010. The most recent lease is dated November 1, 2013 for this unit in the complex. The tenants contend they should not be responsible for rent for October as the lease ended at the end of September 2014.

The landlord stated that rent for September or October 2014 has not been paid and the tenant did not dispute that but contend the landlord refused payment when it was offered to him on two occasions. The tenant's mother said she saw the landlord put up his hands and say, "No, No" when he was offered the rent while he was working on another unit. She said he never accepted cheques. The landlord denies that he was offered the rent and has in his evidence, copies of many cheques issued to him by the tenant, many for partial rent payments. On two occasions, the tenant came to his home, on September 9 to serve him with their amended Application and on October 14 with other evidence but no rent payment was in either envelope. The mother said there was no point in giving it then to the landlord for it had been refused before.

In evidence are several Notices to End Tenancy for unpaid rent with the latest dated September 2, 2014, the tenancy agreement, a rental ledger, many copies of cheques

and receipts for rent and some Affidavits and letters attesting to circumstances of the tenancy. The tenant provided many documents related to repairs, an unknown amount of them paid by the landlord, letters relating to labour provided and personal injury suffered.

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

Analysis:

Order of Possession:

The onus is on the landlord to prove his claim for unpaid rent. I find he satisfied the onus as the tenant did not dispute that rent had not been paid for September and October but alleged they had offered rent for September and been refused. There were significant credibility issues in the hearing. I find the landlord's evidence more credible that he was never offered and refused the rent for September. His evidence is supported by the fact that the tenant served their documents at his home on September 9, 2014 with no rent included; I do not find it logical that they would not have included the rent with the documents because 'it had been refused before'. I also find the mother made inconsistent statements that the landlord did not accept cheques when the documentary evidence clearly shows many cheques issued by the tenant, many for partial rent payments. I find the landlord entitled to an Order of Possession effective two days from service.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has proved his claim for a monetary order for \$1900 for rent for September and October, 2014. Although the tenant contended that they were not responsible for October rent as their lease ended on September 30, 2014, I find sections 44(3) and 45 of the Act state:

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the lease in evidence does not require the tenant to vacate the rental unit at the end of the lease so it continued on a month to month basis. I find no evidence that the tenants gave the landlord a Notice to End their tenancy as required by section 45. Therefore, I find the landlord entitled to rent for September and October 2014 as claimed.

As both parties allege they have monetary claims against each other concerning damages and other matters, I give them both leave to reapply for monetary orders.

Conclusion:

I dismiss the application of the tenant to cancel the Notice to End Tenancy dated September 2, 2014 and give them leave to reapply for their monetary claims.

I find the landlord entitled to an Order of Possession and a monetary order for rent arrears as calculated below. I find they are entitled to recover filing fees for their application and to retain the security and pet damage deposits to offset the amount owing. I give the landlord leave to reapply for further amounts owed for damages.

Calculation of Monetary Award:

Rent arrears September & October 2014 (950x2)	1900.00
Filing fee for this application	50.00
Less deposits (no interest 2010-14)	-950.00
Total Monetary Order to Landlord	1000.00

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: October 16, 2014

Residential Tenancy Branch

