



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR 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 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 a bank fee charged due to a mistake of the landlord; and
- g) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated August 8, 2014. However, the landlord said that they did not receive a copy of the tenant's Application for Dispute Resolution until September 2, 2014 when it was put under their door and the tenant confirmed that. The tenant said he never received a copy of the landlord's Application for Dispute Resolution. However, I find the landlord sent their Application by registered mail and it was verified online that after attempted delivery and several notices, the tenant had not picked it up by September 2, 2014. I find the tenant is deemed to be served with the landlord's Application. I find the Application of the tenant was not served pursuant to section 89 of the Act for the purposes of this hearing but the tenant is deemed to be served with the landlord's Application.

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 retain

the security deposit to offset the amount owing and to recover the filing fee for this application?

Or is the tenant entitled to any relief? Has the tenant demonstrated that they are entitled to compensation for an NSF fee 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. It is undisputed that the tenancy commenced on May 16, 2014, that rent is \$1000 a month and a security deposit of \$500 was paid. However, the terms of the rental agreement were that there would be a 50% reduction of rent on the third month of the tenancy which was August 2014. The tenant expected to pay \$500 for August rent pursuant to this agreement but instead there was an automatic withdrawal of \$1000 which caused his account to go into arrears and the landlord served him the ten day Notice for unpaid rent of \$1050 (August rent plus late fee) on August 8, 2014. When the tenant filed his Dispute, the landlord credited him with \$500 for September 2014 but did not withdraw the Notice to End Tenancy. The landlord said they want to stand on the letter of the law and as the tenant did not serve them with the Application for Dispute Resolution until September 2, 2014, he was out of time and they should be entitled to an Order of Possession and a Monetary Order for rental arrears.

The tenant filed his Application on August 25, 2014 but did not serve it until September 2, 2014 as he said he was gathering his evidence. He requests the Notice to End Tenancy be set aside as he did not owe rent when it was served; he also requests \$45 reimbursement for the NSF fee caused by the landlord's mistake and \$50 for his filing fee. In evidence is the Notice to End Tenancy for unpaid rent, registered receipts, the tenancy agreement and Direct Payment authorization.

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 applicant to prove on a balance of probabilities their claim. I find the landlord has not satisfied the onus. Section 46 of the Act provides a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving Notice to the tenant. Although she said she wanted to stand on the letter of the law in requiring the Order of Possession, I find the Notice to End Tenancy is void as the tenant did not owe any money according to his tenancy agreement when it was served.. I further find the

tenant filed his Application in time on August 25, 2014 although he did not serve it legally according to section 89 of the Act. Therefore, I find the landlord is not entitled to an Order of Possession as their Notice to End Tenancy is void.

I decline to calculate further amounts allegedly owed to the landlord as the Application was based on a void notice but I give them leave to reapply for outstanding rent after they have served a legal Notice to End Tenancy if necessary.

On the tenant's application, the onus is on him to prove his claim. Since he did not serve the landlord legally with his Application, I dismiss his Application and give him leave to reapply for any monies he believes are owed to him. As discussed with him in the hearing, he must serve any Application for Dispute Resolution either personally or by registered mail on the landlord.

Conclusion:

I dismiss both the application of the landlord and tenant in their entirety for the reasons stated above and find them not entitled to recover filing fees for their applications. I give them leave to reapply if necessary for monies owed to them.

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 07, 2014

Residential Tenancy Branch

