



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC 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) An Order of Possession pursuant to Sections 47, and 55 for cause;
- b) A Monetary Order for unpaid rent pursuant to sections 46 and 67;
- c) To retain the security deposit to offset the amount owing; 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 Act for orders as follows:

- e) To cancel a Notice to End Tenancy for cause.

SERVICE:

Both parties attended and the tenant agreed they received the Notice to end Tenancy dated September 9, 2014 to be effective October 31, 2014 posted on their door and the Application for Dispute Resolution by registered mail. The landlord agreed they received the tenant's Application by personal service. I find the documents were legally served according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated September 9, 2014 for cause. Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Has the landlord proved that rent is owed and the amount, and are they entitled to retain the security deposit to offset the amount owing and to recover the filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on March 1, 2003, a security deposit of \$675 was paid and rent is currently \$1600 a month. The landlord stated the tenant owes \$200 rent for August 2014 and \$1600 for each of September, October and November, 2014. The tenant did not dispute the amounts owing.

The Notice to End Tenancy is based on the cause of repeated late payment of rent. The landlord provided evidence of late and partial payments of rent for July 2013 and February to June 2014. He said he discussed the problem with the tenants many times and tried to help them out by giving the male tenant some work but the rent was consistently late. The tenant said she did not dispute that they had been late in paying rent on many occasions but the landlord had not complained about it, they were good tenants, they maintained the property and she is on assistance and the landlord understood.

After discussion, in consideration for some extra time to move out, the parties reached the following agreement:

1. The tenants will clean up all garbage at the front, side and back of the house by November 20, 2014.
2. The tenants will return the keys for the front door and garage to the landlord on November 20, 2014.
3. The landlord agrees to an Order of Possession effective November 20, 2014.

In evidence is the tenancy agreement, the Notice to End Tenancy, a letter regarding late rent in July 2013 and many receipts for partial payments.

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

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. Section 26 of the Act provides that a tenant must pay rent on time, whether or not the landlord is fulfilling his obligations under the Act. Section 47 of the Act states that a cause for ending the tenancy is repeated late payment of rent. I find the preponderance of the evidence is that the tenants were repeatedly late in paying their rent. Although the tenant contended the landlord had not issued warning notices, I find section 47 of the Act does not obligate the landlord to provide warning notices for this cause of repeated late payment. However, I find that the landlord did issue one letter concerning the matter in

July 2013 and I find his evidence credible that he verbally warned them many times as he had difficulty meeting his own financial obligations when he was not receiving rent on time. I dismiss the application of the tenant to cancel the Notice to End Tenancy. The tenancy ended on October 31, 2014 according to the Notice. I find the landlord entitled to an Order of Possession effective November 20, 2014 as agreed in the hearing.

Monetary Order

I find that there are rental arrears in the amount of \$5000 representing rental arrears from August 2014 to November 2014. I find the landlord entitled to retain the security deposit to offset the amount owing.

Conclusion:

I find the landlord is entitled to an Order of Possession effective November 20, 2014 and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I give the landlord leave to reapply for other amounts owing if necessary.

Calculation of Monetary Award:

Rental arrears	5000.00
Filing fee	50.00
Less security deposit plus interest	- 698.90
(No interest 2009-14)	
Total Monetary Order to Landlord	4351.10

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: November 06, 2014

Residential Tenancy Branch

