



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR CNR MNSD MNDC 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; and
- f) 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 September 24, 2014 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 the tenant owes rent? If so, what is the amount of the rent proved to be owed? Is the landlord entitled to recover filing fees also?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenancy commenced in February according to the tenant but the he said the lease began March 1, 2014, rent is \$1450 a month and a

security deposit of \$725 was paid in February 2014. It is undisputed that the tenant has not paid rent for September, October or November, 2014 but he made an Application on September 29, 2014 to dispute the landlord's claim of unpaid rent in August 2014.

The landlord said that the unit is in a strata that forbids rentals and she has been getting notices and fines. She said she originally approached the tenants in July 2014 to offer a free month's rent in August if they would move out by September 1, 2014. However, they did not and have not paid rent since. The tenant said he had offered to try to move by September 1, 2014 but could not arrange anything and the rent was paid for August 2014. The parties agreed that there were no receipts issued and the tenant said he withdrew the rent money in bits and pieces so would be unable to prove he paid it through his bank records. The landlord said she did not have a rent ledger but had prepared a spread sheet showing the amounts owed. Apparently evidence was faxed to the RTB office and mailed to the tenant but it was not in the RTB file and the tenant said he did not receive any. After discussion of the credibility issue of the rent, the landlord said she would waive her claim for August rent but request an Order of Possession effective November 30, 2014 and a monetary order for the other rent outstanding.

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 an applicant to prove their claim. I find the landlord satisfied the onus of proving that there is unpaid rent for September, October and November; the tenant agreed with her calculations. Pursuant to sections 46 and 55 of the Act, I find the landlord entitled to an Order of Possession effective November 30, 2014 as requested.

Monetary Order:

I find the landlord's evidence credible that there is outstanding rent for September, October and November, each in the amount of \$1450, for a total of \$4350.00. However, I find the tenant's sworn testimony credible that rent for August 2014 was paid. He recounted in detail how the landlord had come with her proposal in August just after they had paid their rent. Although he was unable to support his oral evidence with any records, I find this was partly due to the fact that the landlord did not issue any receipts. The tenant has the obligation to pay rent when due according to section 26 of the Act, whether or not the landlord has fulfilled her obligations. However, as pointed out in the hearing, the issue here is one of credibility as the landlord did not keep a rental ledger or issue receipts and it is possible that an error may have been made due to memory of

events and the tenant's memory differs significantly. I find insufficient evidence to prove that August rent was unpaid. As the landlord waived her claim for August rent, I find she is entitled to a monetary order for \$4350 for rent from September to November 30, 2014.

The tenant in their application disputed that August rent was owed and requested the Notice to End Tenancy for unpaid rent be set aside. I dismiss his application to set aside the Notice but, as he was partially successful in his dispute over August rent, I find him entitled to recover his filing fee.

Conclusion:

I dismiss the application of the tenant without leave to reapply but I find he is entitled to recover filing fees for his application due to his partial success as stated above.

I find the landlord entitled to an Order of Possession effective November 30, 2014 as requested and to recover her filing fee of \$100. I find her entitled to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Rent arrears September, October and November 2014	4350.00
Filing fee	100.00
Less security deposit (no interest 2014)	-725.00
Less filing fee to tenant	-50.00
Total Monetary Order to Landlord	3675.00

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: November 20, 2014

Residential Tenancy Branch

