



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 repairs not done to the property; 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 September 3, 2014 and of each other's Application for Dispute Resolution. There was some dispute as to when the tenant received the Notice (Sept 3 or 9<sup>th</sup>) as it was corrected by adding the second tenant's name but I find the date of receipt is irrelevant in this case as the outstanding rent has never been paid. 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 they 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?

**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 October 15, 2013, that rent is \$990 a month inclusive and a security deposit of \$500 was paid. It is undisputed that the tenant has not paid rent for September, October or November but she made an Application on September 16, 2014 to say she has had 3 eviction notices and nothing has been fixed.

In evidence are two Notices to End Tenancy for unpaid rent, the second one with both tenants' names and dated September 9, 2014. The tenant agreed she had never paid the \$990 outstanding on that Notice and she now owes rent of \$990 for each of October and November for over holding. After discussion, the landlord reluctantly agreed that the Order of Possession would be effective November 15, 2014 and the tenant agreed she would vacate on that date and not cause the landlord more costs to evict her.

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 the landlord entitled to an Order of Possession. Although the tenant alleged that certain items had not been fixed, I find section 26 of the Act requires a tenant to pay rent when due whether or not the landlord has fulfilled his obligations. I dismiss the Application of the tenant. The tenancy ended on September 19, 2014 according to the Notice to End Tenancy. The weight of the evidence is that the outstanding rent has never been paid so I find the landlord is entitled to an Order of Possession effective November 15, 2014 as agreed in the hearing.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that the tenant owes \$990 in rent arrears for September and \$1980 in over holding rent for October and November 2014.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply.

I find the landlord entitled to an Order of Possession effective November 15, 2014 as agreed and to a monetary order as calculated below. I find he is entitled to retain the security deposit to offset the amount owing and to recover filing fees for his application.

I give the landlord leave to reapply for further amounts of money that may be owed to him after the tenant vacates.

Calculation of Monetary Award:

Rent arrears plus over holding rent (3x\$990)	2970.00
Filing fee	50.00
Less security deposit (no interest 2013-14)	-500.00
Total Monetary Order to Landlord	2520.00

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 05, 2014

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Residential Tenancy Branch

