



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR 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 or rental loss;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) 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:

- d) A monetary order as compensation for an illegal rent increase pursuant to sections 42 and 43;
- e) To allow unrestricted entry to the tenant and/or his guests pursuant to section 29;
- f) An Order that the tenant may change the locks pursuant to section 31;
- g) An Order of Possession for the tenant pursuant to section 54; and
- h) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution by registered mail. 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 a monetary order for rental arrears and to recover the filing fee for this application?

Or has the tenant proved on the balance of probabilities that he is entitled to an Order of Possession for his unit, that he is entitled to change the locks and have unrestricted access for himself and guests 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 present tenancy was the subject of a fixed term tenancy agreement commencing May 1, 2014 and expiring October 30, 2014. The agreement provides that at the end of the fixed term, the tenancy ends and the tenants must move out of the unit unless agreed with the landlord to renew the contract by signing another contract. The landlord explained that this is a seasonal rental that commands high rent in ski season; she stated that utility costs are \$1600 to \$1800 a month in winter so it is necessary to have a high rent to cover costs. She said they do not usually rent in summer but a tenant wanted to remain after last winter so they agreed to a summer rental for a fixed term of \$2,000 a month. In winter, the house is \$3900 a month to rent and is usually shared by 4 to 6 people. She said she had thought of selling for her spouse is tired of renting but they agreed to rent it for another season and did rent it as of October 31, 2014 for \$3900 a month, the same rent as other years; she said it is not an increase of the winter rate. She did not offer another lease to this tenant as he said he was moving out in September and did remove most of his belongings at that time. He left other items and did not pay rent for October so it appeared he had abandoned the unit and his belongings were put in storage.

The landlord said that this tenant was one of three who signed the rental agreement and then they were joined by a fourth person; each person paid \$500 a month but one of the tenants took responsibility to collect and remit all the rent to the landlord. She said that this tenant took this responsibility but then he said he was moving out in September 2014. He did not pay his \$500 portion for October and left many items in the house. He promised several times to come and pick them up but did not so she removed them and put them in secure storage; for this she is paying \$28.35 a month (for November and December). She and the tenant agreed she was told she could retain the \$325 security deposit (paid in 2013) towards the rent owing. The landlord is also claiming \$80 for a shortfall of rent in September 2014. The tenant did not agree as he said it was one of the other four tenants who did not pay their share and should not be his responsibility.

The tenant in his application states that he was away for a time and when he visited the house on October 31, 2014, he was shocked to find other persons occupying his room and some of the other tenants were using his belongings. The Police were called and he was told that his lease ended with vacant possession on October 30, 2014 and he did not have rights of entry any longer. He is claiming repossession of the unit and

\$4800 rebate of rent. He claims his rent in Winter 2013 was illegally raised to \$1300 a month for one room and that he was forced to sign that lease with another individual's name as well as his own as the landlord said the rooms were rented to two persons in winter (and not to individuals). He said he was desperate to stay so he made up a name to sign and told the landlord his girlfriend was coming anyway. He said the contract provided by the landlord was not the contract he signed which was more like the form available from the Residential Tenancy Branch. He said he signed one in summer 2013 at a lower rental and then in November 2013 at \$1300 a month rental; he disputes this as an illegal rent increase. The tenant said he also paid \$50 to have the hot water heater fixed.

In evidence are registration receipts, rent receipts, statements of the parties, the fixed term signed tenancy agreement and many emails regarding rent payments. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenant owed \$500 rent as his portion for October and that the tenant requested her to use the security deposit of \$325 as partial payment. Her evidence is supported by the tenant's agreement in the hearing.

However, I find insufficient information to support her claim for the additional \$80 shortfall in September 2014. I find there were a number of tenants sharing this home and I find insufficient evidence to support her assignment of the shortfall to this tenant. He denied he owed this amount and said another female tenant had failed to pay it.

It is undisputed that the tenant left many items in the home. I find the lease ended on October 30, 2014 and provided for vacant possession at 1:00 p.m. on that date. As the tenant had paid no rent for October and had moved out according to his email, I find according to the Residential Tenancy Regulation section 24 (1)(b) the landlord was entitled to treat his property as abandoned and place it in storage. I find the landlord entitled to recover \$56.70 for storage costs to date.

In his application, the tenant requests an Order of Possession for the unit. However, I find he signed a fixed term lease which ended on October 30, 2014 and provided for vacant possession on that day. I find his tenancy ended and he is not entitled to possession of the unit, or to orders that he may change locks or admit himself or guests to the premises.

In respect to his dispute concerning an illegal rent increase, I find the weight of the evidence is that he signed individual new contracts for each season and the rental amounts varied if it was a summer season rental or a winter season rental. I find sections 42 and 43 of the Act do not apply to this case as it was not one rental contract wherein the rent was raised illegally. I find insufficient evidence to support his allegation that the contract provided by the landlord as evidence was not the contract he signed. He provided no alternate copies as evidence. I also find insufficient evidence to support his statement that he paid \$50 to fix the hot water; no receipt was in evidence.

In summary, I dismiss the application of the tenant as I find insufficient evidence to support his allegations.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application.

Calculation of Monetary Award:

Rent arrears October 2014	500.00
Storage fees for November and December 2014	56.70
Filing fee	50.00
Security Deposit agreed to be retained (no interest 2013-14)	-325.00
Total Monetary Order to Landlord	281.70

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: December 04, 2014

Residential Tenancy Branch

