



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR OPC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46 or 47, and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed he received the Notice to end Tenancy dated October 6, 2014 in his mailbox and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated October 6, 2014 for unpaid rent and another dated August 21, 2014 for cause. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

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 June 13, 2014, a security deposit of \$792.50 was paid and rent is currently \$1585 a month plus \$45 for parking. The landlord said the tenant had still not paid rent for October 2014 and rent for November and December is also unpaid. The landlord claims \$4,964 in unpaid rent representing \$14 unpaid in September and \$1585 plus \$45 parking plus \$20 late fee for each of October, November and December 2014. The landlord did not request that the security deposit be used to offset the amount owing.

The tenant did not dispute the amount owing. However he noted many concerns with the building and management. He said he had tried to address all their concerns related to the Notice to End Tenancy for cause but agreed he had not paid the rent outstanding on the ten day Notice to End Tenancy for unpaid rent. The tenant has had the Police and other agencies involved in the past and noted his intention of doing this again. In evidence is a rent ledger, the tenancy agreement, Notices to End Tenancy, many letters from the tenant and management and a copy of an assault charge. The tenant noted he is on probation.

An attempt was made to negotiate a move out date but the landlord said they needed an Order of Possession as soon as possible because of safety concerns.

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. There is outstanding rent. The Tenant did not pay the rent and has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice which was October 18, 2014. An Order of Possession is issued effective two days from service. Although the tenant noted he was withholding rent because of his concerns with the building and management, I find section 26 of the Act provides that a tenant must pay rent when due, whether or not the landlord is fulfilling their obligations under the Act.

Monetary Order

I find that there are rental arrears in the amount of \$4964 representing rental arrears from September 2014 (\$14) and October, November and December 2014 (each \$1630 + \$20 late fee). The landlord did not request application of the security deposit to offset the amount owing so the security deposit remains in trust with the landlord to be dealt with in accordance with section 38 of the Act after the tenant vacates.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears including parking and late fees	4964.00
Filing fee	50.00
Total Monetary Order to Landlord	5014.00

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: December 04, 2014

Residential Tenancy Branch

