



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR CNR 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;
- f) To dispute a rent increase pursuant to section 43; and
- g) To obtain a rent rebate for facilities not provided and/or not repaired pursuant to section 65.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated November 14, 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 there is unpaid rent and they are entitled to an Order of Possession and a monetary order for unpaid rent plus the filing fee? Or is the tenant entitled to relief?

Has the tenant proved on the balance of probabilities that the landlord did not provide facilities as promised or neglected to repair? Was there an illegal rent increase?

**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 tenant moved into the unit about May 2013. It is a basement suite of about 950 sq. ft. and the landlord said the City wanted to decommission the suite so they did not want to rent it. However, the tenant who had been living next door said she needed a place to stay for a few months so they agreed to her moving in. They allowed her to pay \$550 plus utilities although their previous tenant paid \$725 plus utilities and they did not take a security deposit as it was a temporary arrangement. The landlord said in the Fall of 2013, the tenant said she wanted to wait until Spring of 2014 to move. In January 2014, the landlord said the tenant said she did not want to pay utilities anymore; although the landlord said she had to pay, the tenant refused as she said she could not afford it on her pension. Eventually she agreed to pay \$600 including utilities, and to pay more when she had funds and move out in the Spring. She did not pay extra and never moved.

The landlord said in Spring 2014, the tenant's mother moved in with her and the tenant said she would now sign a tenancy agreement. In September 2014, a tenancy agreement was signed by both parties for \$750 a month including utilities. The landlord said this was the going rate for suites in their area and the tenant and they discussed how their temporary arrangement now needed to be formalized and the rent reflect going rates in this nice residential area. In the agreement was a clause regarding smoking which was an issue and also prohibiting pets. The tenant paid rent of \$750 for September and October 2014. The mother left in October 2014. On November 1, 2014, the tenant gave a cheque for \$550 citing financial problems and the fact she did not have a dryer in her unit. She said her mother had moved out and she could not afford the rent. When the landlord spoke to her, she then gave a cheque for \$650 but asked that it not be cashed until later. Next day, November 2, 2014, the landlord found a cheque for \$600 taped to their door as she only wanted to pay that amount. On November 3, 2014, the landlords met with her to say the rent was \$750. The landlord cashed only the cheque for \$650 on November 10, 2014 and subsequently received \$550 towards rent in December 2014. He did not issue a receipt for December rent limiting it for "use and occupancy only". The landlord claims \$300 in rent arrears (\$100 for November and \$200 for December 2014) and requests an Order of Possession.

The tenant stated that when she moved in, her rent was \$550 plus hydro; she states she never saw a hydro bill but only the landlord's written record of what was owed. She disputes the \$750 rent on the tenancy agreement signed on September 1, 2014 as an illegal rent increase. She said that when her Mother was ill and moved in with her, she voluntarily agreed to pay \$750 but her Mother moved out on October 31, 2014. She said she did not remember signing the new tenancy agreement on September 1, 2014.

The tenant also asks for a rent rebate for loss of use of the stove in 2013. The landlord agreed it was removed for 3 months because the suite was decommissioned but he provided a hot plate and the tenant also used a barbeque. The tenant said she could not cook family dinners or bake as she had no stove. She stated there had been water dripping through a light fixture on a few occasions but the landlord had repaired his dishwasher when she informed him and she was not inconvenienced by it.

In evidence is the Notice to End Tenancy for unpaid rent, monetary worksheets, proof of service, receipt for December rent, a tenancy agreement signed September 1, 2014 and statements of the parties.

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

**Analysis:**

**Order of Possession:**

A Notice to End Tenancy dated November 14, 2014 was issued for unpaid rent of \$750. I find the tenant paid rent of \$650 on November 10, 2014 so only owed \$100 as of November 14, 2014. I find the landlord subsequently accepted \$550 rent for December 2014 without any receipt limiting the acceptance 'for use and occupancy only'. By doing so, I find the intent of the parties becomes an issue as the tenant apparently thought her tenancy was continuing. I find the landlord by accepting rent for December without limiting it 'to use and occupancy only' reinstated the tenancy, making his notice of no effect. Therefore, I find the landlord is not entitled to an Order of Possession. As discussed in the hearing, the landlord is at liberty to issue further Notices as required, keeping in mind the legal requirements.

The tenant has disputed regarding an illegal rent increase. I find the weight of the evidence is that the landlord allowed the tenant to occupy the suite as a temporary arrangement as it was an illegal suite and the City was concerned. I find the evidence of the various discussions with the landlord concerning the tenant's finances, the changing rent and hydro and her potential move out date which she kept changing support the landlord's evidence that it was a temporary arrangement. I find the weight of the evidence is that the rent of the former tenant was \$725 so I find the landlord's evidence credible that they never intended to rent to this tenant for \$550 or \$600 a month. The correspondence concerning finances and changing rent amounts throughout 2013 and 2014 and the fact there was no security deposit supports the landlord's evidence that there never was an intention to enter into a formal tenancy agreement with this tenant at a price she could afford. The tenant in the hearing

mentioned several times her limited income also. As I find the parties were never in agreement regarding a tenancy and a fixed rental amount, I find the terms and rent for this unit was never established. I find the tenant did enter into a tenancy agreement in September 1, 2014 for a rent of \$750 a month including utilities. Although she said she did not remembering signing it, I find she paid \$750 a month for the next two months so I prefer the landlord's evidence that it was signed and discussed with her. I find this was not an illegal rent increase but a new contract establishing a formal landlord and tenant relationship at a fixed rent amount. Therefore, I dismiss the tenant's dispute concerning an illegal rent increase and I find her rent is \$750 a month.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord is owed \$300 in rent arrears for November and December 2014. Although the tenant pleaded her straitened financial circumstances, I find she is still obligated to pay her rent on time.

The tenant made a number of complaints concerning lack of facilities. Regarding a separate dryer for her, I find this is not included in her lease so I dismiss this portion of her claim. The landlord honestly stated that she was without a stove for 3 months as the City had the suite decommissioned. Although he supplied a hotplate and she had a barbeque, I find the lack of a stove was a significant inconvenience to her. I find her entitled to a rebate of \$30 a month for 3 months pursuant to sections 27 and 65 of the Act for removal of a stove.

In respect to her claim of inability to see original hydro bills, I find the landlord's written statements derived from a separate meter to be credible and to be reasonable as the tenant's unit was run entirely on hydro (no gas) and her bills varied from \$30 lows in summer to the high \$60s (one \$80s) in winter. She also paid only \$600 a month at one point with a promise to pay extra for utilities which she did not. I dismiss this portion of her claim. I find the drip of water through the light fixture was of short duration and fixed quickly and the tenant agreed that it was not a significant interruption or inconvenience to her so I dismiss this portion of her claim.

**Conclusion:**

I dismiss the landlord's application for an Order of Possession. I find him entitled to a monetary order as calculated below and to recover filing fees for this application.

I find the tenant entitled to a rent rebate of \$90 for loss of use of a stove. I dismiss the remainder of the application of the tenant without leave to reapply. No filing fee was involved.

Calculation of Monetary Award:

Rent arrears November and December 2014	300.00
Filing fee to landlord	50.00
Less rent rebate to tenant	-90.00
Total Monetary Order to landlord	260.00

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 18, 2014

---

Residential Tenancy Branch

