



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR 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, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and agreed that the Notice to end Tenancy dated November 10, 2014 was served by posting it on the tenant's door and the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Preliminary Issue:

The tenant's name was spelled incorrectly on the Application. Both parties requested it be amended. It is amended to show her correct name on this Decision and Order.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated November 10, 2014 for unpaid rent. 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 tenant testified that tenancy commenced in December 2011, rent is \$1000 a month and a security deposit of \$500 was paid. The tenant agreed that she did not pay rent from September to December; while the landlord claimed other amounts owing for June to August, the landlord accepted and agreed to the tenant's

calculations. The landlord provided no rental records as evidence and said there was no Residential Tenancy Agreement.

The tenant said she had not paid rent because of the significant problems with the house, including mould, plumbing and bad floors; she claimed she was never reimbursed for work she had done and had had some items stolen by a plumber sent by the landlord. She said she was moving out but when she returned to the home on December 10, 2014, the locks had been changed. She says her washer, pool table, dishwasher and other items were still in the house.

The landlord said she was telephoned by a neighbour on December 8, 2014 to inform her they had seen the tenant moving out. They went to the home on December 10, 2014 and found the doors open and a window broken so they put some locks on the doors to secure them. The tenant stated she had locked the home when she left and the landlord speculated that someone had come in through the broken window and left doors open and perhaps stole some items.

The parties agreed that the tenant could attend the home on **December 20, 2014 at 11:30 a.m. and the landlord would open the home to allow her to retrieve her belongings and list anything that was missing.**

In evidence is the Notice to End Tenancy, proof of service and a registration receipt.

On the basis of the 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 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. An Order of Possession is issued effective two days from service. Although the tenant claimed lack of repair as a reason for withholding rent, she did not file an Application to request repairs be done or to authorize a rent rebate. I find section 26 of the Act requires a tenant to pay rent when due whether or not the landlord is fulfilling their obligations under the Act.

I find that there are rental arrears in the amount of \$3,000 representing rental arrears of \$1,000 for each of September, October and November, 2014. Although the landlord

provided no rent records to support this amount, I find the tenant honestly agreed she owed these arrears. I find the landlord changed the locks on December 10, 2014 so I find her not entitled to rent for the period after she illegally took over possession of the unit. Although the landlord said she thought the unit was abandoned and only garbage left, I find she provided insufficient evidence to support her submission. Therefore, I find her entitled to rental loss of only \$322.50 for the ten days in December ($\$1000/31 \times 10$). I find her entitled to retain the security deposit to offset the amount owing.

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 of \$50. Although she paid fees of \$100 for this application, I find this was based on a claim for rental arrears of over \$5,000 which was not sufficiently supported by her evidence.

Calculation of Monetary Award:

Rent arrears to November 30, 2014	3000.00
Rental loss to December 10, 2014	322.50
Filing fee	50.00
Less security deposit (no interest 2011-14)	-500.00
Total Monetary Order to Landlord	2872.50

I HEREBY ORDER that the landlord allow the tenant access to the rental unit at 11:30a.m. on December 20, 2014 and permit her to retrieve all her belongings and list anything that may be missing.

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

