



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD 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 the tenant agreed she received the Notice to end Tenancy dated September 30, 2014 and the Application for Dispute Resolution personally. I find the tenant was legally 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 September 30, 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:

The tenant attended ten minutes after the hearing commenced but she verified the prior details given by the landlord were correct with the exception of the security deposit. Both parties were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced about a year prior to this landlord buying the home in May 2014 and assuming the tenancy, rent is currently \$750 a month and the tenant said they paid the previous owner \$750 in security deposit. The landlord denied receiving this deposit and said the previous owner said she had applied it to some outstanding rent. The tenant said she had called the previous owner who said she intended to return her security deposit to her, rather

than give it to the new owner but she never did send it, although the tenant called her several times.

When queried on the amount of the deposit, the tenant said they came from another province where a tenant must pay a full month's rent as a deposit so she assumed that the landlord was correct at the time. The tenant did not dispute that they owe rent of \$200 for August 2014 plus \$750 for each of September to December (total \$3200). She acknowledged that they had signed a note saying they would leave on October 31, 2014 but said they were not able to do that.

In evidence is the Notice to End Tenancy and the tenant's note ending her tenancy as of October 31, 2014. 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 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 as requested by the landlord.

Monetary Order

I find that there are rental arrears in the amount of \$950 for August and September 2014 and loss of revenue in the amount of \$2250 from October to December 2014. I find the tenant's evidence credible that she paid \$750 security deposit to the previous owner/landlord and always paid their rent and gave no permission to retain the deposit. I find her evidence credible for she explained clearly why the amount equalled one month's rent and her disappointing conversations with the previous owner. Furthermore, she admitted honestly that they owe the rent claimed by the landlord.

Although this landlord said the previous owner told him she applied the security deposit to outstanding rent, I find this was illegal according to section 38 of the Act as there is no written permission to retain or apply this deposit. As a landlord assuming a tenancy from a previous owner, I find he had the responsibility to verify the matter of the security deposit with the tenant and the lawyers or notaries acting for the parties and obtain any necessary written documentation from them. He may be able to take action now to reclaim this deposit from the previous owner. I find the tenant is entitled to be credited with the amount of the security deposit which should have remained in trust for them.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below and to recover filing fees paid for this application. I find the tenant is entitled to be credited with the security deposit to offset the amount owing.

Calculation of Monetary Award:

Rent arrears \$200 + \$750 (Aug-Sept)	950.00
Revenue Loss : Oct, Nov., Dec. (each \$750)	2250.00
Filing fee	50.00
Less security deposit	-750.00
Total Monetary Order to Landlord	2500.00

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 10, 2014

Residential Tenancy Branch

