



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR 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;
- 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) A monetary order or rent rebate as compensation for repairs to the property;
- g) An Order that the landlord do emergency and other repairs to the property;
and
- h) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated December 9, 2014. The tenant confirmed receipt of the Landlord's Application for Dispute Resolution but the Landlord said they never received the tenant's application. The tenant said his co-tenant had served the Application but he was not sure of the time or method. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing but I find insufficient evidence of service of the tenant's application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to relief? Has the tenant proved on the balance of probabilities that the landlord has neglected to do emergency and other repairs and they are entitled to a rent rebate as compensation for repairs not done 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 tenancy commenced in September 15, 2014, that rent is \$1000 a month and a security deposit of \$500 was paid. It is undisputed that the tenant has not paid rent for December 2014 or January 2015 but they made an Application on December 15, 2014 to request compensation for emergency repairs and to cancel the Notice to End Tenancy for unpaid rent.

As the tenant was unable to prove service of their Application, I decline to consider any of their requests other than those related to the Notice to End Tenancy for unpaid rent.

The landlord requests an Order of Possession and a monetary order for \$2000 in rent arrears and to retain the security deposit to offset the amount owing.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, an NSF cheque for December and an addendum re. certain reductions for showing the home.

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 the landlord entitled to an Order of Possession. Although the tenant said they withheld December rent due to lack of repair, I find section 26 of the Act states that a tenant must pay rent when due whether or not the landlord fulfills their obligations under the Act. I find they provided no receipts for any emergency repairs they did themselves so I find no entitlement to deduct funds from the rent pursuant to section 33 of the Act. An Order of Possession is issued to the landlord effective two days from service.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that \$2,000 is owed for rent as it is supported by the tenant's acknowledgment in the hearing. I find the landlord entitled to a monetary order for \$2000 plus filing fee and to retain the security deposit to offset the amount owing.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application.

I find the landlord entitled to an Order of Possession and to recover filing fees for their application. I find the landlord entitled to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Arrears of rent December 2014 & January 2015	2000.00
Filing fee	50.00
Less security deposit (no interest 2014)	-500.00
Total Monetary Order to Landlord	1550.00

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: January 15, 2015

Residential Tenancy Branch

