



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR OPC CNC CNR AAT 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 or 47 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 and to cancel a Notice to End Tenancy for cause; and
- f) An Order to allow access to the tenant's guest pursuant to section 30;

SERVICE

The tenant did not attend the hearing. The landlord provided sworn testimony that he served the two Notices to End Tenancy, one dated December 1, 2014 for unpaid rent and one dated November 26, 2014 for cause by posting them on the door and served the Application for Dispute Resolution by registered mail. It was confirmed online as successfully delivered. 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 rent is owed and/or there is sufficient cause to end the tenancy? If so, are 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 should give access to the property to his guest?

Background and Evidence:

Only the landlord attended the hearing although the tenant was successfully served with the Application/Notice of Hearing and also had his file scheduled at the same time. The landlord was given opportunity to be heard, to present evidence and to make submissions. It was decided to proceed with the 10 day Notice for unpaid rent as it is the earliest effective date. It is undisputed that the tenancy commenced in March 2014 for a fixed term ending on March 31, 2015, that rent is \$1450 a month and a security deposit of \$725 was paid. It is undisputed that the tenant has not paid rent for December 2014 or January 2015 and the landlord said he seemed to be in process of moving out.

The tenant made Application on December 8, 2014 to dispute the Notices to End Tenancy. He said on his Application that an uninvited person was coming on the property and causing problems and he is not subletting but merely has his girlfriend staying to help his mother. He did not dispute the amount of rent owing.

The landlord requests an Order of Possession and a monetary order as follows:

Rent owed for December and January : $\$1450 \times 2 = \2900

Window Repairs: \$1000

Move Out fee: \$50 per the lease and strata bylaws.

The landlord said he based the cost of the windows on the tenant telling him it would cost \$500 for one window but he had gotten no estimates yet himself. He said the tenant or his guest caused the windows to be broken, one on the front door by slamming the door so hard.

In evidence are Notices to End Tenancy, the tenancy agreement, two Strata notices re unauthorized installation of a window air conditioner and noise violations. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. Although the Tenant made application pursuant to Sections 46 and 47 to set aside the Notices to End a Residential Tenancy, he did not attend the hearing or comment in his Application disputing the amount of rent owed. An Order of Possession is issued 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 satisfied the onus of proving that rent is owed for December 2014 and January

2015. Although the tenant may be moving out, I find he has not returned the keys, the remote or the parking key so has not yielded possession and will be responsible for rent until he vacates and returns keys. I find that there are rental arrears in the amount of \$2900 representing rental arrears to January 31, 2015. I find he is also responsible for a \$50 move out fee according to the Strata Bylaws and lease.

Although the landlord submitted a claim for the cost of windows broken by the tenant or his guest, I find insufficient evidence to support the cost of the windows; I give the landlord leave to reapply for further amounts owed to him after he regains possession of the unit. I find the landlord entitled to retain the security deposit to offset the amount owing and to recover filing fees for this Application.

I dismiss the Application of the tenant in its entirety as I find insufficient evidence to support his allegations.

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. I give the landlord leave to reapply for further amounts owed.

Calculation of Monetary Award:

Rent arrears to January 31, 2015	2900.00
Move Out Fee	50.00
Filing fee	50.00
Less Security Deposit (no interest 2014)	-725.00
Total Monetary Order to Landlord	2275.00

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee is awarded due to his lack of success.

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 14, 2015

Residential Tenancy Branch

