



# 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;
- 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.

### **SERVICE:**

Both parties attended and the tenant agreed he received the Notice to end Tenancy dated January 15, 2015 taped on the door and the Application for Dispute Resolution by registered mail. I find that the tenant was properly 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 January 15, 2015 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 undisputed evidence is that the tenancy commenced in December 2011, a security deposit of \$800 was paid and rent is currently \$1600 a month. The landlord is claiming the rental arrears of \$6200 from November 2014 to February 2015. The tenant disputed the amount owing and said he had paid rent for November and December 2014. The landlord said the tenant only paid \$200 of the four months rent owed and other cheques written in November and December were applied to the outstanding past balance and not to the specific month written.

The landlord provided an account letter he had given to the tenant dated December 23, 2014 detailing amounts paid and owing. The letter notes that the balance of rent owing on November 1, 2014 was \$6000, the tenant made a \$1600 payment on November reducing the balance to \$4400 which again rose to \$6,000 on December 1, 2014. The tenant then paid \$1600 on December 3, 2014, \$700 on December 5, 2014 and another \$700 which reduced the balance owing to \$3,000 as of December 23, 2014. In the letter, the landlord said they had agreed the tenant's family could stay on for the holiday season despite this. The tenant agreed he had not paid rent for January or February 2015 but claimed others in the home were responsible for portions of the rent.

The tenant said he did not understand what was happening, he had paid the rent, he was not responsible for all of the rent and was unable to provide proof of cheques written as he could not get them from the bank for 14 days.

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

### **Analysis**

The onus of proof is on the landlord as applicant to prove his claim on a balance of probabilities. I find the landlord has satisfied the onus. I find his evidence credible as it is well supported by his detailed account letter which he provided to the tenant in December 2014. While the tenant may have thought he was paying rent for November and December 2014 with cheques he wrote in those months, I find there was already outstanding rent of \$6,000 by November 1, 2014 and the landlord was within his rights to apply these payments to the oldest debt.

In respect to the tenant's statement that others are responsible, I find the most recent lease is in his name and no further lease was signed with other parties so I find him responsible for the rental payments. Regarding his statement of not understanding, I find he was served with the Notice to End Tenancy on January 15, 2015 which states clearly that he has 5 days to either pay his rent or dispute the Notice. The Notice stated he owed \$4600 in rent as of January 1, 2015; he did not dispute the Notice or submit any documentary evidence to dispute amounts for this hearing. I find also the tenant was provided with a letter statement of account in December and he had ample time to dispute this with the landlord and/or obtain any cheques to dispute it but he provided no evidence that he had done this. While the landlord said he was not being truthful, I think he may have been mistaken in not taking into account the amount of rental debt he had already accumulated by November 1, 2014.

### 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.

### Monetary Order

I find that there are rental arrears in the amount of \$6200 representing rental arrears from November 2014 to February 2015. I find the amount claimed is well supported by the landlord's detailed account dated December 23, 2014 (i.e. \$3000 owed at end of December plus \$3200 in rent for January and February 2015). I find the landlord entitled to a monetary order for \$6200 plus \$100 filing fee less the security deposit.

### **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 retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

### Calculation of Monetary Award:

Rental arrears to February 2015	6200.00
Filing fee	100.00
Less security deposit (no interest 2011-15)	-800.00
Total Monetary Order to Landlord	5500.00

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: February 19, 2015

---

Residential Tenancy Branch

