



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 and carpet cleaning;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain all or part of 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) To order the landlord to comply with the Act by issuing receipts and giving legal notice of entry pursuant to section 29.

### **SERVICE**

Only the landlord attended the hearing although the tenant had also filed an Application for Dispute Resolution. She said the Notice to End Tenancy dated March 2, 2015 was served by posting it on the door and the Application personally with a witness; she confirmed personal receipt of the tenant's Application for Dispute Resolution. 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 and utilities are owed and they are entitled to an Order of Possession and a monetary order for rental/utility arrears and damages 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 is not complying with the Act?

**Background and Evidence:**

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in December 2014, that rent is \$675 a month plus one third utilities and a security deposit of \$350 was paid. The landlord said the tenant made partial payments of rent and currently there is rent owed for March of \$408.33 and utilities of \$7.66 (gas) and \$51.15 (hydro) plus \$215 owed for April 2015 and \$7.03 for gas and \$47.04 for hydro. Invoices are provided to support the utility costs. She requests an Order of Possession and a monetary order for \$736.21 in outstanding rent and utilities and \$50 for late fees for March and April 2015. She also claims \$135 for carpet cleaning costs as the lease states this amount.

The tenant did not attend the hearing or submit documents to support his allegations. He said he was overcharged for utilities; the landlord denied this and referred to the invoices and lease that required him to pay one third of utilities. He stated the landlord enters the suite without permission; the landlord denies this. He said the landlord refused receipts; the landlord denied this and said she always gave receipts when requested and in fact, had issued receipts "for use and occupancy only" for any payments made since the Notice to End Tenancy was issued. The tenant also said the landlord made threatening statements and withheld his government cheque. The landlord denied this and said she put his mail in his box as soon as it was delivered. The tenant also noted the landlord terminated his tenancy without written consent but the landlord said she had no idea what he meant.

In evidence is the Notice to End Tenancy for unpaid rent, receipts for "use and occupancy" and emails from the tenant promising or making excuses for rent payments. 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 Notice to End Tenancy was served by posting it on the door on March 2, 2015 which is deemed to be received on March 6, 2015. The tenant applied to dispute the Notice on March 31, 2015 which is out of time. According to section 46 of the Act, the tenant must pay the rent or dispute the Notice within 5 days of service or he is presumed to have accepted the end of the tenancy as set out in the Notice. I find the tenancy ended on March 12, 2015 and the landlord is entitled to An Order of Possession.

#### Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has proved rent and utilities amounting to \$736.21 are owed for March and April 2015. I find she is entitled to \$50 for late fees (\$25 for each of March and April 2015) pursuant to Regulation 7 of the Residential Tenancy Regulations. The landlord requested to have the security deposit remain in trust to be dealt with pursuant to section 38 of the Act. I find her not entitled to carpet cleaning costs at this time as the tenant has not vacated the premises and I find insufficient evidence to support her claim. Although a sum of money is stated in the lease for carpet cleaning, I find insufficient evidence that this is the cost to clean carpets as there is no estimate or evidence of this being done. . I give her leave to reapply for this and other damages.

On the tenant's application, the onus is on him to prove on the balance of probabilities his claim. The landlord denies his statements in the claim and he did not attend to support his claim and has provided no documentary evidence to support his statements. I dismiss the tenant's Application without leave to reapply.

#### **Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply; no filing fee was involved. I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order as calculated below. I find her entitled to recover filing fees for this application. I give her leave to reapply for cleaning and other amounts that may be owed when the tenant leaves.

#### Calculation of Monetary Award:

Unpaid rent and utilities (March, April 2015)	736.21
Late fees March, April 2015	50.00
Filing fee	50.00
Total Monetary Order to landlord	836.21

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: April 21, 2015

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Residential Tenancy Branch