



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR RPP RP 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) To return the security deposit;
- g) To make repairs to the property pursuant to sections 32 and 33;
- h) To return the tenant's personal property;
- i) To allow the tenant to sublet because the landlord's permission has been
- j) A monetary order or rent rebate as compensation for incomplete repairs to the property and loss of essential utilities; and
- k) 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 April 18, 2015 and of each other'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 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 his personal property, that his security deposit should be returned, that repairs must be made to the property, that essential services have been withheld and he should be allowed to sublet because the landlord's permission has been unreasonably withheld?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. A hearing between these parties was held on February 6, 2015 after two adjournments in December and January. It is undisputed that the tenancy commenced in February 2012 in this one bedroom basement apartment, that rent was \$550 a month due on the 15th of the month and a security deposit of \$250 was paid.

A fire occurred in the tenant's suite on November 15, 2014 and as a result, there was significant damage to the suite. As of the date of the previous hearing, it was found that the bathroom had not been cleaned up and restored and the tenant lacked power to the bedroom, bathroom, the microwave and oven. The Notice to End Tenancy dated November 19, 2014 was cancelled in the hearing on February 6, 2015 and the arbitrator ordered that the tenant's rent would be reduced to \$100 a month commencing March 15, 2015 until the start of the rental period following the issuance of a Certificate of Occupancy by the relevant authority of the local government. The parties were given leave to reapply should a Certificate of Occupancy not be attainable. The tenant was also issued a monetary order for \$1500 against the landlord. In the hearing, the tenant said the landlord had not paid him yet.

The landlord served a Notice to End Tenancy on April 25, 2015 alleging unpaid rent of \$450 in April as the tenant paid only \$100. The tenant said there is no Certificate of Occupancy provided yet so he is abiding by the order of the previous arbitrator. The landlord provided as evidence a Certificate of Completion & Satisfaction from a Restoration Service dated March 21, 2015 unsigned by the company but signed by the landlord but he agreed he had not applied for a Certificate of Occupancy. The tenant said he had requested a Bylaw Officer to attend the premises on Monday, June 15, 2015. The landlord said if the unit has to be legalized, the tenant may be required to vacate for the contractors to do any work required.

In evidence is also a 48 hour Notice of Entry to the tenant "to allow restoration services...for the bathroom in the suite...starting Monday June 4, 2015". The landlord said that the tenant had queried that items repaired were up to code so the Notice was to check that items were to code. The tenant objected that the Certificate of Completion

and the 48 hour Notice of Entry were submitted late for evidence and he received them a week or so ago.

In respect to return of the tenant's personal property, the landlord said it was part of a box to enhance internet and he would return it tonight. He said he has asked the tenant many times to have a lease signed but the tenant refuses and won't provide an email address. He said the tenancy agreement does not include the provision of internet but it was supplied for a time as a courtesy through Wi-Fi. He said this was discussed in the previous decision.

The tenant said the previous arbitrator said he could put in his own basic service and deduct it from rent; he wants only what was agreed originally and he was given some reimbursement in the previous hearing. He said he is refusing to sign a lease as it does not include internet now so is a change in agreement. He said he has no evidence of the previous agreement; the only solution would be to call as a witness the landlord's father as he was the one who made the original agreement.

The tenant appeared to have forgotten some of the issues raised in his written application and did not mention the question of subletting or of having his security deposit refunded.

In evidence is the Notice to End Tenancy for unpaid rent, the previous decision of February 6, 2015 and the Certificate of Completion and Notice of Entry as noted above.

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

Analysis:

Late Evidence:

Although the tenant objected to the late evidence, I find he did receive it on June 2, 2015 and in time to submit his objection. As part of his case rests on this late evidence, I find it important to consider it as part of the evidence in the matter.

Order of Possession:

The Notice to End Tenancy is for unpaid rent of \$450 in April 2015. I find the weight of the evidence is that the tenant's rent was still \$100 a month in April as no Certificate of Occupancy was issued; in fact, the landlord has not even made an Application for a Certificate of Occupancy. I find a Certificate of Completion and Satisfaction (unsigned by the company but signed by the landlord) and issued by a Restoration Company may be sufficient for insurance purposes but is not an Occupancy Certificate issued by the

relevant government authority as ordered by the arbitrator in the hearing on February 6, 2015. As the tenant's rent was \$100 in April and the parties agreed he paid this amount, I set aside the Notice to End Tenancy for unpaid rent of \$450 in April 2015. The landlord's Application is dismissed. The rent continues at \$100 a month until either a Certificate of Occupancy is issued or the parties must reapply because it is not obtainable. I do not consider myself seized of the matter should either party reapply.

The onus is on either applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that the landlord has part of an internet box belonging to the tenant which he agrees to return tonight. He is ordered to do so.

Sections 7 and 67 of the Act provide for compensation. The applicant must demonstrate:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant was awarded \$100 for withdrawal of a cable 'premium service' in the previous hearing. However, I find insufficient evidence provided by the tenant for this hearing that he is entitled to free internet service. There is no tenancy agreement and I find insufficient evidence of his alleged verbal agreement with the landlord's father. I find insufficient evidence of a violation of the Act or an agreement and of any loss suffered by the tenant.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the security deposit should be refunded. I find in accordance with section 38 of the Act that the tenant is not entitled to the refund of his security deposit until the later of him vacating and providing his forwarding address in writing to the landlord. I dismiss this portion of his claim.

I dismiss the claim of the tenant to have repairs done to the property as the weight of the evidence is that these repairs may be completed based on the Certificate provided by the landlord and the tenant is having a Bylaw Officer attend at a future date concerning repairs and other matters.

I dismiss the application of the tenant to sublet the unit as he provided no evidence on this point and did not raise the issue at the hearing. In light of the ongoing situation regarding legality of occupancy, I find it inadvisable to consider subletting at this point.

Conclusion:

I dismiss the application of the landlord. The Notice to End Tenancy dated April 18, 2015 is set aside and cancelled. The tenancy continues.

I find the tenant is entitled to the return of his property and to recover his filing fee for this application. I dismiss the rest of his application for reasons as stated above.

I HEREBY ORDER that the tenancy continues at a rent of \$100 a month until the rental unit is certified for occupation by the relevant authority of the local municipal government. Should such certification not be obtainable, I grant the parties leave to reapply.

I HEREBY ORDER that the landlord return the tenant's internet box as agreed forthwith.

I HEREBY ORDER that the tenant may recover his filing fee for this Application by deducting \$50 off his rent for July 15, 2015.

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: June 09, 2015

Residential Tenancy Branch

