



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT DRI MNR CNR OPR MNDC LAT PSF RP OLC 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 allow more time to apply to cancel a Notice to End Tenancy for unpaid rent pursuant to section 66;
- f) To cancel the Notice to End Tenancy for unpaid rent pursuant to section 46;
- g) To suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 29;
- h) To dispute an additional rent increase pursuant to sections 42 and 43;
- i) To provide services required by law pursuant to section 27 and to make repairs to the property pursuant to sections 32 and 33;
- j) To have the landlord comply with the Act and/or tenancy agreement;
- k) To have the return of all or a portion of the security deposit;
- l) Compensation for loss and other items as owed; and
- m) To recover the filing fee for this application.

SERVICE

The tenant who was also an applicant did not attend the hearing. The landlord attended the hearing and gave sworn evidence with a witness that the Notice to End Tenancy dated April 22, 2015 and the Application for Dispute Resolution were served personally as both parties occupy the same building. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

The tenant did not attend but filed an application on May 7, 2015. The landlord said they never received the tenant's application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and the amount owed? Is he entitled to an Order of Possession and to recover filing fees?

Has the tenant proved on a balance of probabilities that the landlord is violating the Act or tenancy agreement and if so, to how much compensation have they proved entitlement?

Background and Evidence:

The tenant did not attend although they had filed an application to be heard at the same time. 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 on February 1, 2014, that rent was \$700 a month inclusive and a security deposit of \$350 was paid. The landlord said that they had increased the rent by \$50 in March 2015, after one month's notice and the tenant verbally agreed to the increase; however, in the tenant's application he is disputing this as an illegal increase. In the hearing, I advised the landlord of the provisions of sections 42 and 43 regarding rent increases, namely that the rental increase allowed for 2015 was 2.5% and that the tenant must be given 3 months notice of any increase.

The tenant listed many complaints in his application but did not dispute the amount of rent claimed. He said he was refusing to pay the rent because of the problems. The landlord said he had not received a copy of the tenant's application.

In evidence is the Notice to End Tenancy for unpaid rent, statements of the parties, some utility bills and a note from the tenant saying he planned to pay the rent and giving some reasons why it was not paid. 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 effective two days from service, as requested. The tenant made an Application to dispute the Notice but I find he was out of time. Section 46(4) of the Act states a tenant has 5 days after receiving the Notice in which to pay the rent or file a dispute. I find the landlord's evidence credible that the tenant was served personally with the Notice on April 22, 2015 and they did not file an Application until May 7, 2015 (and never served it on the landlord) so I find they were out of time and I deny an extension of time as no evidence is provided for the reason. I find also the tenant has not paid any rent since the Notice to End Tenancy was served. Although the tenant alleges they were withholding rent because of the landlord's conduct, I find section 26 of the Act provides a tenant must pay rent when due whether or not a landlord is fulfilling their

obligations under the Act or tenancy agreement. Pursuant to sections 46 and 55, I find the landlord entitled to an Order of Possession.

Monetary Order:

I find the tenant has not paid rent for April, May and June 2015. However, I find the landlord gave an illegal rent increase on March 1, 2015 of \$50 a month. Even if the tenant verbally agreed, I find any agreement must be in writing pursuant to section 43(1)(c) and the landlord must give the tenant notice of any increase at least three months before the effective date of the increase according to section 42 (2). Therefore, I find the landlord not entitled to the illegal imposed rent increase. I find the landlord entitled to recover unpaid rent of \$700 a month for April, May and June 2015.

In respect to the tenant's application, I find they did not serve the landlord with their application in order to give him opportunity to respond. They also did not attend the hearing to support their application. I dismiss their application without leave to reapply.

Conclusion:

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application. The landlord did not request to apply the security deposit to offset the amount owing so the deposit will remain in trust to be dealt with according to section 38 after the tenant vacates.

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

Calculation of Monetary Award:

Rent arrears (3x\$700) April, May and June 2015	2100.00
Filing fee	50.00
Total Monetary Order to landlord	2150.00

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: June 18, 2015

Residential Tenancy Branch