



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD MNDC 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; and
- f) 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 May 6, 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 a balance of probabilities that she is entitled to an Order of Possession and a Monetary Order for rental arrears and filing fees?

Or is the tenant entitled to relief and to recover filing fees?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. This is the fourth hearing between these parties since October 2014. In the hearing on January 6, 2015, a two month Notice to End Tenancy was set aside as the landlord provided insufficient evidence to meet the test of

good faith. In that hearing, extensive repairs were discussed based on a Home Inspection Report made for the landlord who became the owner in 2014. The hearing on March 12, 2015 was again based on a two month Notice to End Tenancy for landlord's use of the property. In that hearing the parties reached an agreement to settle their dispute. The tenant agreed to move out on or before June 30, 2015 and the landlord agreed to allow the tenancy to continue until that date. The parties agreed that this comprised the full and final settlement of all aspects of this dispute for both parties. In the hearing today, the tenant explained the June 30, 2015 move-out was based on the fact that his son needed to finish his school year and he was entitled to one month free rent due to the two month notice which had been explained by the arbitrator at the time.

It is undisputed that the tenancy commenced in April of 1995 or 1996 with a previous owner. Rent is now \$900 a month and when the current landlord purchased the property on October 1, 2014, the tenant was required to pay the new landlord \$450 security deposit; he maintains he paid the previous landlord a security deposit but the current landlord provided a Notary's Statement of Adjustments showing no security deposit was transferred to her.

The tenant agrees he only paid \$450 rent for May 2015 and told the landlord to apply his security deposit for the balance. He says he is entitled to free rent for June 2015 so all his rent is paid until the end of June 2015 when he will be moved out. The landlord said she had advice that she was able to serve a 10 day Notice for unpaid rent in May 2015 when the full rent was not paid. She is concerned about possible damage to the property as she saw the hardwood floor was ripped up and the grass not cut and the previous landlord said the tenant has a history of denying entry for repairs. The tenant said there is no damage other than what the landlord's Home Inspection on purchase revealed. He said he has mowed the grass in the past but he is under no obligation to do this.

The landlord is claiming \$2700. She said this is \$450 for May rent, \$900 for June rent and the rest in case the tenant does not vacate on June 30, 2015. She enquired about damage claims and I advised her that she has up to two years from the end of the tenancy to claim against the tenant. She and her interpreter wanted to discuss hypothetical damage claims but I refused as this application was not made to claim damages and I advised the issues would be decided by a future arbitrator should such a claim be made.

In evidence is the Notice to End Tenancy for unpaid rent, a Notary's Statement of Adjustments and written statements of the parties.

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

Analysis:

As explained to the parties in the hearing, I have no jurisdiction to interfere with or overturn another arbitrator's decision. I find the weight of the evidence is that the parties agreed to settle all matters between them on March 12, 2015 and it was agreed that the tenancy would continue until June 30, 2015. Since this hearing was based on a two month Notice to End Tenancy for landlord's use of the property, I find the tenant was correctly informed that he was entitled to free rent in the last month. I therefore find the landlord not entitled to rent for June 2015 or to future rental loss or damages which must be proved at the time.

The tenant states he told the landlord to keep the security deposit of \$450 for May's rent and he paid the balance of \$450. He maintains he paid a security deposit in 1995 or 1996 and hopes to find the receipt as he packs to move. He regarded the second payment of \$450 made in October 2014 as an overpayment and he deducted it from May's rent and paid the balance. According to section 19(2) of the Act, if a tenant overpays a security deposit, he may deduct the overpayment from rent or otherwise recover it.

The landlord said he had no permission to deduct the security deposit and she never received the first deposit from the seller so pursuant to section 21, he could not legally deduct it from his rent; although she had made a settlement with the tenant in March 2015, she decided to serve the 10 day Notice to End Tenancy for unpaid rent in May 2015.

On consideration of all the facts and the Settlement Agreement made in March 2015, I find the landlord is entitled to an Order of Possession effective June 30, 2015. As the Settlement Agreement was based on a two month Notice to End Tenancy for landlord's use of the property, I find the tenant is entitled to one month's free rent in June 2015.

I decline to end the tenancy earlier based on the 10 day Notice to End Tenancy as I find the tenant's position re. deducting an overpaid security deposit has merit and ending the tenancy based on this 10 day Notice would erode the rights of the tenant which had been negotiated in the Settlement Agreement. I find the Notary's Statement of Adjustments is not conclusive evidence that there was not an earlier security deposit or that it was not transferred; item 6 in his Statement is "All other adjustments not referred to herein, or incorrectly adjusted, if any, shall be settled directly between the Vendor

and Purchaser". I note there was no statement from the Seller regarding what happened to this alleged deposit provided in evidence although the landlord said she had talked to him regarding the difficulty of access for repairs. Furthermore, as stated to the parties, the monetary result for this hearing would be the same as the security deposit would be applied to offset amounts owing and the landlord has up to two years to apply for future rental loss or damages.

Conclusion:

I find the landlord entitled to \$450 for the balance of rent owed for May 2015 and to recover filing fees for this application. I find her entitled to retain the security deposit to offset the amount owing. I find her entitled to an Order of Possession effective June 30, 2015 to support the settlement reached in the hearing on March 12, 2015.

I set aside the 10 day Notice to End Tenancy dated May 6, 2015 for the reasons stated above and I find the tenant entitled to recover filing fees as his application had merit.

As the balance is zero, no monetary order is issued.

Calculation of Monetary Award:

Balance of Rent owed for May 2015	450.00
Landlord filing fee	50.00
Less security deposit of Oct 2014(no interest 2014-15)	-450.00
Less Tenant filing fee	-50.00
Total	0.0

Dated: June 23, 2015

Residential Tenancy Branch

