



Dispute Resolution Services

Page: 1

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;
- b) An Order of Possession pursuant to sections 46 or 47 and 55; and
- c) 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:

- d) To cancel a Notice to End Tenancy for unpaid rent ;
- e) To allow access to the property to retrieve her goods;
- f) To return her personal possessions; and
- g) A refund of her security deposit.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated June 1, 2015. The landlord said he served the Application for Dispute Resolution by registered mail; the tenant said she did not receive it. It was verified online that it was mailed on June 25, 2015, delivery was attempted, notices were left but it was unclaimed by July 13, 2015 when it was being returned to the sender. I find the tenant is deemed to be served with the Application. Although she said she had moved, I find the tenants were still in possession of the property and as she admitted in the hearing, the father of the male tenant has been living there and is there now so the registered mail should have come to her notice. The tenant filed her Application on June 5, 2015 but did not serve it on the landlord; she said she thought the Residential Tenancy Branch would serve him. I find only the landlord's 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/or they have good cause to end this tenancy? If so, are 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 any relief?

Has the tenant proved on the balance of probabilities that the Notices should be set aside and they should be entitled to an Order to allow access to the property and to get a refund of the security deposit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in December 2014 and that rent is \$800 a month. The landlord said no security deposit was paid and the tenant said there was a security deposit of \$400; however, she said it was all verbal and no receipts were issued and she has no other proof showing a withdrawal from her bank account at that time. The landlord said the tenants have never paid June rent and none since then and are still in possession of the property. The tenant said she paid the rent in cash to the landlord's mother but when queried for a description of the woman was unable to supply one in the conference. She referred to someone as a "Grandmother" of another person and the landlord said it appeared to be his wife's mother to whom she was referring but he denied that any mother got any money from the tenants.

In evidence are some emails and in one, the landlord reminds a relative of the tenant's that he allowed the tenants into the house because (quote) "your daughter was pregnant and they had no running water. We let them move in 17th of dec and no rent charges til Jan 1 2015". The landlord said the tenancy was okay until April 15, 2015 when he was notified the property was locked down by Police and the female tenant acquired a no contact order against the male tenant. This is the subject of an ongoing investigation. He said he visited the property on April 24, 2015 and told the female tenant that the tenancy was over due to reported illegal activity and disruption of the neighbourhood and she should plan to move by the end of May. He said the male tenant paid rent for the month of May on April 24, 2015 although he was barred from the property.

The landlord said he saw the female tenant on May 30, 2015 and asked her if she was in the process of moving. She became angry and said she was not going to be paying rent as it was the male tenant's responsibility. He was told by others that she threatened to burn the house down and he reported this to the Police. He attended with Police on June 1, 2015 and served the ten day Notice to End Tenancy plus a one month Notice to End Tenancy to the female tenant who was there with her father, mother and a social worker. Her relatives verbally abused the landlords. He said he noticed that

doors had been altered on the premises and a new door installed without supplying a key to them. He said sometime after he left, the father of the male tenant installed a dead bolt, saying the female tenant was leaving with the last of her stuff. He said the landlords did not go back to the property as he was working elsewhere and then had an industrial accident. An email from the father of the male tenant confirmed he had installed a dead bolt (seemingly because of the dispute with the female tenant). He said he was called by Police on June 2, 2015 as the female tenant was alleging the landlord had locked her out with a deadbolt and he provided evidence to them that it was the male tenant's father and not him who had installed the deadbolt. The female tenant and her mother went on Facebook and made some disparaging comments about the landlord; the site moderator of the Buy and Sell deleted rude comments made on their site by the female tenant and her mother.

He said he went to the property on June 11, 2015 to see if the tenants had vacated but they found both driveways blocked by vehicles and campers belonging to the father of the male tenant. It appears that the father has taken control of the property. In the hearing, the female tenant confirmed that the male tenant's father was living on the property and she and the male tenant had moved elsewhere. Meanwhile, the landlord cannot get access to his own possessions or to list the property for sale. The male tenant has continued with threats to the landlord and his family and his property and has been reported to the Police a number of times.

In evidence are two Notices to End Tenancy, a chronology from the landlord, many emails and proof of service. The tenant provided no documentary evidence but requested \$400 on her Application which was not served on the landlord.

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

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenants paid no rent for June 2015. I found his evidence to be forthright and supported by emails and Police Reports at the time and I prefer his evidence over the tenant's evidence. I found his evidence to be more credible as the tenant's claim to have paid rent in cash to some woman for June is inconsistent with her action of being at the property on June 2, 2015 to remove her belongings in order to vacate. I find the landlord entitled to an Order of Possession against all occupants of the property effective two days from service. If enforcement is necessary, this Order may be enforced through the Supreme Court of Canada.

In respect to the security deposit, I find the landlord's evidence credible that there was no deposit. The tenant's claim that she paid a security deposit of \$400 is inconsistent with the fact stated in the email to her mother that she was allowed to move in to the property on December 17, 2014 rent free until January 1, 2015 because she was pregnant and there was no running water where she was living. She was unable to provide any documentary evidence to support her statement that she paid the deposit. I dismiss her Application for the return of her deposit as I find she provided insufficient evidence that she ever paid a deposit. Furthermore, I find she never served the landlord with her Application.

I find the landlord entitled to a monetary order for June's rent of \$800 and to recover his filing fee for this Application.

Conclusion:

I dismiss the application of the tenant in its entirety and I find she is not entitled to recover filing fees for her application.

I find the landlord entitled to an Order of Possession effective two days from service. This must be enforced through the procedure of the Supreme Court. I find him entitled to a monetary order for \$800 for rent for June, 2015 and to recover his filing fee of \$50 for the application. I give him leave to reapply for further rental losses and damages that he may have incurred.

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: July 29, 2015

Residential Tenancy Branch

