



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; 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; and
- (f) To recover the filing fee for this application pursuant to section 72.

SERVICE:

Both parties attended. The landlord gave sworn testimony that the Notice to end Tenancy dated July 2, 2015 was served personally on the female tenant and the Application for Dispute Resolution by registered mail. Proof of service of the Notice to End Tenancy was filed and signed by a witness. The tenant said he did not get the Notice to End Tenancy but agreed he got the landlord's Application. Whether or not the female tenant gave him the Notice to End Tenancy, I find the landlord's evidence credible that the tenant was served as it is supported by a signed proof of service and leaving it with an adult who apparently resides with him is legal service according to section 88(e) of the Act. The Tenant said he did not serve the landlord with his Application because the Residential Tenancy Office never called him to say the documents were ready. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act but the landlord was never served with the tenant's Application.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated July 2, 2015 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The landlord testified that tenancy commenced on April 1, 2015 although the tenant had the premises from March 15, 2015, rent is \$1325 a month and a security deposit of \$662.50 was paid on March 3, 2015. The landlord testified that the tenant is in rent arrears of \$3205 as of August 1, 2015. He accounted for the arrears as follows: June \$555 balance owed and \$1325 for each of July and August 2015. He requests an Order of Possession and a monetary order for rent arrears and to retain the security deposit to offset the amount owing.

The tenant did not dispute the amount owing but said the house was in bad shape when he moved in and he had arranged to do some renovations. He agreed with the landlord for a move-out date of August 8, 2015.

In evidence is the Notice to End Tenancy, Proof of service, the lease agreement, rent calculations and registration receipts.

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 that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. Although the tenant filed an Application, I find he never served it on the landlord so his Application is dismissed. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective August 8, 2015 as agreed by the landlord.

Monetary Order

I find that there are rental arrears in the amount of \$3205 representing rental arrears to August 1, 2015. I find the landlord entitled to retain the security deposit to offset the amount owing.

Conclusion:

I find the landlord is entitled to an Order of Possession effective August 8, 2015 and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application. I dismiss the Application of the tenant in its entirety without leave to reapply.

Calculation of Monetary Award:

Rent arrears to August 1, 2015	3205.00
Filing fee	50.00
Less security deposit (no interest 2015)	-662.50
Total Monetary Order to Landlord	2592.50

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: August 05, 2015

Residential Tenancy Branch

