



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR ERP RR MNDC MNSD FF

Introduction:

Both parties attended the hearing and acknowledged legal service of each other's documents. The landlord made an application 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.

The hearing also dealt with an application by the tenant for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) An order to repair the property; and
- g) A monetary order or rent rebate as compensation for lack of repairs to the property which have caused lack of peaceful enjoyment contrary to section 28.

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 through act or neglect has failed to repair and caused him loss of his peaceful enjoyment? If so, to how much compensation has he proved entitlement?

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 June 1, 2014, that rent was \$775 per month and a security deposit of \$387.50 was paid. It is undisputed that the rent was raised to \$794.30 as of November 1, 2015 and the tenant has not paid rent for October, November or December 2015 but he made an Application

on September 30, 2015 to request compensation for emergency repairs and disturbance of his peaceful enjoyment.

The tenant said the hot water heaters in his unit make so much noise that he cannot sleep. He did not pay his rent because the heaters were not fixed. In any case, he said he cannot afford the rent since the landlord dismissed him from employment and he now can get only 10 hours work a week. He said he has filed with Human Rights and with the Court. He agreed the landlord has sent 3 or 4 repair persons but said, although it is better, the noise is still there when the heat comes on about 3 or 4 a.m. He said he has to turn it off at that time and use an electric heater he bought and his electric bill has increased significantly.

The landlord said this is a hot water heating system and they put in a brand new boiler in 2011. They pointed to the evidence on file of all the repair companies bills and comments. They said none of the repair people have been able to hear anything other than the normal sounds of hot water heating and none of the other tenants in any of the 60 units has problems with this noise. Nevertheless, they said they employed a number of plumbers including an outside company but no one else could hear the noise the tenant complained of although they made a number of adjustments to valves to see if this would assist him. The tenant asked if the landlord had heard the noise on the USB stick he provided. The landlord said that they had and had asked repair people to listen to it but they all said that they had not heard that noise from the tenant's unit. One Senior Maintenance Contractor commented that it appeared exaggerated by other noises like pots banging and he had never heard noises like that from the tenant's system or any other. In his opinion, any noise was normal and this was the opinion of the professional plumber also.

In evidence is the Notice to End Tenancy for unpaid rent, many work orders commencing September 15, 2015 noting attendance to fix a noisy heater reported by the tenant, a report from an outside company dated October 30, 2015 noting they had found one valve closed and the noise was cut to normal when the valve was opened, a bill dated November 1, 2011 for a new boiler and many emails.

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

Analysis:

Order of Possession:

Section 26 of the Act provides that a tenant must pay rent when due, whether or not a landlord is fulfilling their obligations under the Act. There are limited exceptions such as

when a tenant has followed section 33 of the Act and expended their own money on emergency repairs. In this case, I find insufficient evidence of the necessity of emergency repairs and no evidence that the tenant expended his own money to fix them. Although the tenant made Application under the Act on September 30, 2015, this was not an Application to cancel the Notice to End Tenancy but for the landlord to repair some noisy heaters. I find the tenant has not paid the outstanding rent since October 2015. I find the tenancy is at an end and the landlord is entitled to an Order of Possession effective December 15, 2015 as requested in the hearing.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving the amount of unpaid rent and lost revenue as he has a detailed rent ledger in support. I find the landlord entitled to a monetary order for \$2438.76 plus the filing fee. The unpaid rent was \$775 for October, \$794.38 for each of November and December 2015 plus \$25 late fee for each month.

On the tenant's application, the onus is on him to prove that repairs need to be completed and that his peaceful enjoyment has not been protected by the landlord. I find insufficient evidence that the landlord through his actions or neglect has failed to do repairs or to protect the peaceful enjoyment of the tenant. I find the landlord's evidence credible that they acted diligently to address the tenant's concerns about noisy heaters as their evidence is well supported by the many invoices and reports in evidence commencing in September 2015. I find their evidence credible that repairs are not needed as the reports of professionals support this and the tenant agreed that the landlord had sent a number of persons to do repairs. I find an Order to Repair is moot in any case as the tenant must vacate by December 15, 2015 according to the Order of Possession. I dismiss the Application of the tenant. As explained to the tenant in the hearing, I do not have jurisdiction to hear human rights claims or matters he has before the courts.

Conclusion:

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.

I find the landlord entitled to an Order of Possession effective December 15, 2015 and to a monetary order as calculated below. I find them entitled to retain the security deposit to offset the amount owing and to recover filing fees for this application.

Calculation of Monetary Award:

Rent arrears & loss plus late fees:	2438.76
Filing fee	50.00
Less security deposit (no interest 2014-15)	-387.50
Monetary Order to landlord	2101.26

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: December 02, 2015

Residential Tenancy Branch

