



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR CNR OPR OLC RP MNDC MNSD FF

### **Introduction:**

Both parties made applications and attended the hearing. They confirmed personal service of the 10 day Notices to End Tenancy 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. The landlord applies 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 tenant applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for repairs not done to the property and reimbursement for appliances he bought;
- g) To restrict the landlord's entry to the property pursuant to section 29 and to order him to comply with the Act; and
- h) To recover the filing fee for this application.

### **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, 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 neglected to do repairs and is he entitled to reimbursement for appliances he bought? Should the landlord's entry to the property be restricted?

### **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 March 1, 2009, that rent is \$600 a month and a security deposit of \$300 was paid. It is undisputed that the tenant paid only \$300 of rent in January 2016 and none for February and March 2016. The landlord served ten days Notices in January and February 2015. The landlord claims \$1500 in rent

arrears and over holding rent (\$300 for January, \$600 for each of February and March 2016). The landlord said they would agree to have the Order of Possession effective March 31, 2016 and the tenant agreed in response to vacate at that time.

The tenant requested compensation for the stove and refrigerator. The landlord provided evidence that he had originally rented the whole house to a person who decided to rent the basement to this tenant and supplied a stove and refrigerator for him. When that head tenant moved in 2009, this tenant requested to stay and signed a lease. He purchased a second hand stove to replace the original one and a second refrigerator. Apparently the stove he bought does not have a standard plug as there were problems plugging it into the receptacle which worked with the first one. The landlord said the refrigerator and stove are the tenant's and he should sell or take them with him as the landlord does not want them.

The landlord provided further evidence of doing a furnace valve repair, fixing a toilet and interacting with the tenant to advise him of procedures for eviction under the Act if the rent was not paid. Apparently he offered some solutions such as agreeing to a move-out date which would solve the problem. He said the tenant construed these as threats but he, as landlord, was just following the legal process and explaining it. He denied threatening the tenant in any way. The tenant complained to the Police but the landlord explained what was happening to them also.

In evidence are the Notices to End Tenancy for unpaid rent, the tenancy agreement, a receipt for \$300 "for use and occupancy only dated February 1, 2016 and written statements of the tenant. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

The onus is on the applicant to prove on a balance of probabilities their claim. As explained to the parties in the hearing, section 26 of the Act requires a tenant to pay his rent on time whether or not a landlord fulfills his obligations under the Act. I find the landlord's evidence credible that \$1500 of rent is owed for January, February and March 2016. I dismiss the application of the tenant to cancel the Notices to End Tenancy. The tenancy was at an end on January 31, 2016 pursuant to the first Notice to End Tenancy. I find the landlord entitled to an Order of Possession effective March 31, 2016 as agreed and to a monetary order for \$1500 for rent arrears and over-holding rent.

On the tenant's application, the onus is on him to prove on the balance of probabilities that his peaceful enjoyment was disturbed by the landlord contrary to section 28 of the Act. Although the tenant alleged threats by the landlord and reported this to the Police, I find insufficient evidence to support his allegations. Apparently the threats were to evict him but I find the landlord's evidence more credible that he understands the Act and would not illegally evict a tenant. His statement is supported by the fact that he accepted \$300 in partial payment after issuing a Notice to End Tenancy but was sufficiently aware of the provisions of the Act to make

the receipt “for use and occupancy only” so that the tenancy would not inadvertently be reinstated. While the tenant who had lived there for 11 years may have perceived the landlord’s discussions as threats, I find insufficient evidence that the landlord made threats. I find informing a tenant of the law and process of eviction under the Act is not a threat. I dismiss this portion of his claim.

I find the weight of the evidence is that the appliances belong to the tenant and he may sell or take them with him. I find there is no obligation for the landlord to reimburse him for appliances. I find insufficient evidence that the landlord entered the tenant’s unit illegally contrary to section 29 of the Act. I find the lease agreement sets out that inspections are to be arranged by landlord and renter and there is insufficient evidence that the landlord did not proceed to give the necessary notice. I dismiss this portion of the tenant’s claim.

I find insufficient evidence that the tenant notified the landlord of necessary repairs and the landlord failed to perform them. Although the gas company came out in response to a call that the tenant smelled gas, they found only a valve that needed replacing and it was installed and tested. There were no other reported issues with the furnace. Although the tenant said it was unsafe as it was not inspected regularly, I find insufficient evidence that the furnace was unsafe. I dismiss this portion of the tenant’s claim.

### **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 is entitled to an Order of Possession effective March 31, 2016 as agreed and to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find he is entitled to recover the \$100 filing fee.

### Calculation of Monetary Award:

Rent arrears and over holding rent	1500.00
Filing fee	100.00
Less security deposit (no interest 2009-16)	-300.00
<b>Monetary Order to Landlord</b>	<b>1300.00</b>

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: March 10, 2016

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**Residential Tenancy Branch**

