



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR FF

### **Introduction:**

Both parties attended the hearing and the tenant acknowledged receipt of the Notice to End Tenancy and the Application for Dispute Resolution. The landlord applies pursuant to the *Residential Tenancy Act* (the 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.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated February 12, 2016 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in December 2002, a security deposit of \$345 was paid and rent is currently \$680 a month. It is undisputed that the tenant owes \$810 in unpaid rent. The Notice to End Tenancy dated February 12, 2016 stated that \$2040 was owed for rent arrears. The landlord gave evidence that the tenant paid \$1410 on March 1 and \$500 on March 4, 2016 which left a balance of \$810 owed (\$130 from February and \$680 from March). The landlord is claiming the rental arrears of \$810. The tenant did not dispute the amount owing.

The landlord also requested an Order of Possession. The new owner agreed the tenant paid him rent for April 2016 and the security deposit was transferred to him at the close of the sale. The tenant said she presumed her tenancy was continuing. The landlord agreed that he had not given receipts limiting his acceptance of unpaid rent to “use and occupancy only” but said he made some offers to the tenant to encourage her to vacate.

In evidence is a letter regarding Notice, the Notice to End Tenancy and proof of service, a Notice of Rent Increase and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession?**

Residential Policy Guideline 11-1 states that the question of waiver arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the landlord accepts rent for the period after the effective date of the Notice, the intention of the parties are in issue. Intent can be established by evidence as to

- Whether the receipt shows the money was received for use and occupation only
- Whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- The conduct of the parties.

I find the effective date of the Notice was February 25, 2016 and the landlord accepted payments of \$1910 in March and the new owner/landlord accepted rent for April 2016. The weight of the evidence is that no receipts limiting acceptance of the money 'for use and occupation only' were given and the tenant assumed her tenancy was continuing. As explained to the parties in the hearing, a tenancy agreement is a contract. By continuing to accept payment without limitation after saying the contract was at an end, the landlords waived their Notice. Therefore, I find the landlord is not entitled to an Order of Possession and I find the tenancy is continued.

The undisputed evidence is that the tenant owes \$810 in arrears to the original landlord. I find him entitled to a monetary order for that amount. As the security deposit has already passed to the new owner, it will not be deducted to offset the amount owing.