



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR RR MNDC MNSD FF

### **Introduction:**

Both parties made Applications for Dispute Resolution and both attended the hearing. The tenant confirmed receipt of the Notices to End Tenancy (3 of them) and both parties confirmed receipt of each other's applications. 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/or 47 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 Act to set aside the Notices, to order the landlord to do repairs, a monetary order or rent rebate as compensation for repairs to the property; and 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/or they have other cause to end the tenancy? 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 he proved on the balance of probabilities that he is entitled to compensation for loss of heating, a broken toilet and for cleaning up mold? Is he entitled to recover filing fees for the application?

### **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 February 1, 2016, that rent is \$530 a month plus \$50 utilities and a security deposit of \$265 was paid. It is undisputed that the tenant has not paid rent or utilities for March and April 2016 for a total of \$1160 owed. The ten day Notice to End Tenancy was served March 2, 2016 to be effective March 11, 2016. Another Notice to End Tenancy

was for cause with an effective date of March 24. I made the decision to proceed first to hear the issues on the 10 Day Notice and if it was successful, to not proceed with the One Month Notice with a later effective date.

The tenant said he should be compensated for the lack of a toilet for two weeks. The landlord and her property manager said the toilet was fixed on March 6, 2016 which was 3 to 4 days after the tenant reported it. The tenant said there was at least a week of plunger problems before that. The landlord said he had plugged the toilet himself and there was one other toilet in this rooming house. The landlord wanted to discuss further and other damage done by the tenant and other rent lost due to his actions. I declined to hear it as it was not part of her claim on this Application and there was insufficient information as to the costs of the damage.

The tenant said he also was without heat while the landlord was on vacation in February 2016 and the landlord gave him a portable heater when she returned. The landlord said this tenant turned off the heat at night and caused problems with the other tenants. Then possibly his room took longer to heat during the day but there was nothing wrong with the heater. The tenant denied he turned off the heat at night; he said there were two other tenants in the basement and they never complained. He said he had to sleep 13-14 days without the necessary heat and he sometimes slept in the living room.

The tenant said there was a significant amount of cleaning to be done in the house, especially of the mold. He spoke to the landlord and she agreed to pay him to do it. She was in a rush to go abroad for her vacation. The landlord agreed she was in a hurry but no other tenants were in the house at that time. She thought an amount of about \$80 might have been mentioned but she would need receipts for the landlord as she just sublets. Her property manager said he was looking after the house while she was gone and he went to look to see how much cleaning was needed. He saw a couple of rooms that needed some cleaning and he estimated a cost of \$50 to do it for her. She accepted but when he went to do it, he found the tenant had already done it. The tenant kept escalating the amount he wanted as compensation. The tenant estimated it took him about 30 hours to clean and he requests compensation.

In evidence is the Notice to End Tenancy for unpaid rent, a Notice to End Tenancy for cause, statements of the parties, the tenancy agreement and letter complaints from other tenants.

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 the tenant owes rent and utilities of \$1160 and has paid none of it since the 10 day Notice to End Tenancy was served on March 2, 2016. The tenant filed his Application to dispute the Notice to End Tenancy on March 3, 2016 and cited some problems and reasons. However, I find section 26 of the Act states a tenant must pay his rent on time whether or not the landlord is fulfilling their obligations under the Act. I find the weight of the evidence is that the landlord is entitled to an Order of Possession effective April 15, 2016 as she requested.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has proved rent and utilities of \$1160 are owed and the tenant did not dispute this amount. I find the landlord entitled to a monetary order for \$1160 and to recover her filing fee; I find she is entitled to retain the security deposit to offset the amount owing.

In respect to the tenant's claim, the onus is on him to prove it on a balance of probabilities. I find insufficient evidence to prove that he was without a toilet for 2 weeks due to an act or neglect of the landlord. I find the toilet was plugged for about a week but there is insufficient evidence that this was due to the landlord's act or neglect. I find the evidence is that the toilet was actually broken in early March and was replaced within 3 days on March 6, 2016. The tenant agreed this was probably correct. Also there was another toilet in the home that could be used. I find the tenant not entitled to compensation as the breakage was not due to an act of the landlord and the landlord did not neglect the issue but worked diligently to replace it within a few days. I dismiss this portion of the tenant's claim.

Regarding the heating issue, the landlord states the tenant had heat in his room but he turned off the heat at night. The property manager and another tenant who wrote a letter both said they had witnessed this. The landlord gave him another heater because he said he was cold but the landlord speculated that his room was colder because he was turning off the heat at night. I find insufficient evidence to support the tenant's allegations that he had no heat in his room and that it is due to act or neglect of the landlord. I dismiss this portion of his claim.

In respect to his claim for compensation for cleaning, I find there was some sort of an agreement or discussion with the landlord about this. The landlord said she thought about \$80 was discussed and her property manager said he had estimated he could do it for \$50. Although she gave the property manager authority to do it, he said it was

done by the time he went over. I find the tenant is claiming about 30 hours of work but as he said in the hearing, he had no written agreement with the landlord and should have obtained one before doing this much work. I find insufficient evidence to support his claim for 30 hours of work. However, based on the agreed discussions with the landlord, I find sufficient evidence for him recover \$80 for his labour. This will be deducted from the amount owed to the landlord.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective April 15, 2016 as requested and to a monetary order as calculated below. I find her entitled to recover her filing fee and to retain the security deposit to offset the amount owing. I give the landlord leave to reapply within the legislated time limits for further and other damages with proof after the tenant has vacated.

I find the tenant entitled to compensation of \$80 and to recover \$50 of his filing fee due to his limited success. I dismiss the remainder of his Application without leave to reapply.

Calculation of Monetary Award:

Unpaid rent and utilities March, April 2016	1160.00
Filing fee	100.00
Less security deposit of tenant	-265.00
Less compensation to tenant	-80.00
Less partial filing fee to tenant	-50.00
<b>Balance in Monetary Order to Landlord</b>	<b>865.00</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: April 07, 2016

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Residential Tenancy Branch