



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD MNDC FF

Introduction:

Both parties filed Applications and attended the hearing. They agreed they were legally served with each other's application. 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 and damages;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) 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:

- d) to cancel a Notice to End Tenancy for unpaid rent and for a refund of one year's rent for the hardship they had endured; and
- e) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and that he incurred damages by the tenant not vacating as agreed and withholding a laundry room key? If so, is he entitled to an Order of Possession? What is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord by act or neglect caused them to suffer hardship? If so, to how much compensation are they entitled and are they 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 about 5 years ago and the present landlord bought the property in April 2013 and

assumed the existing tenancy. The rent is \$700 a month and the tenant said she paid a security deposit of \$350 to the previous owner. The present landlord said they never received a security deposit for her; the property manager telephoned the owner in the hearing to ensure this was the case as the tenant said the present owner had told her she got it transferred. The landlord served a Notice to End Tenancy on March 5, 2016 for unpaid rent and both parties agreed that the tenant had paid no rent for March or April 2016. The tenant said they vacated March 31, 2016 and cleaned the place on April 3, 2016 and texted the landlord that she could get the keys. The property manager said he had received no message about them vacating. The landlord claims as follows:

1. \$1400 rent for March and April 2016
2. \$150 for utilities (\$75x2)
3. \$550 paid to a new tenant for moving expenses for these tenants did not vacate as agreed by March 15, 2016
4. \$18.10 for a new lock for the laundry room door. These tenants had the only key and the other tenants could not get in to do their washing after knocking on the door of these tenants. It was urgent so the landlord went and got another lock. The landlord never had a key for the laundry room door.
5. \$475 for the refund of the security deposit to the new prospective tenants who could not move in.

The tenant said that the roof was leaking and the landlord said there was nothing wrong. The tenant became ill and had to get a pump for asthma. She said the basement became very damp and she could smell mould. When she called the City, they told her to call the Residential Tenancy Branch. This is a basement suite where they have lived for 5 years and another tenant lives upstairs. She said when the upstairs tenant cleaned, water came through. The landlord said they were told in January 2016 that there appeared to be some leaking but it was off and on. He said they hired a Professional construction company to diagnose and fix the problem in February 2016. It took some time because of the rain and the company needing some dry days to work on the torched on roof. It is all fixed now with new drywall and insulation. He said the company never diagnosed a mould problem.

In evidence is the Notice to End Tenancy for unpaid rent, a tenancy agreement with a new tenant for March 2016, many photographs submitted by the tenant and a physician's note saying the tenant is being investigated for asthma and to make sure there is no mould in the apartment.

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 landlord entitled to an Order of Possession. Although the tenant disputed the Notice to End Tenancy in time, I find the undisputed evidence is that the tenant owes \$1400 in unpaid rent for March and April 2016 and \$150 for unpaid utilities. Section 26 of the Act provides a tenant must pay their rent on time whether or not the landlord fulfills their obligations under the Act. An Order of Possession is issued effective two days from service.

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord entitled to recover \$1550 for unpaid rent and utilities for March and April 2016. Although the tenant said they vacated on March 31, 2016 and sent a message to the landlord to pick up the keys on April 3, 2016 after they cleaned, I find insufficient evidence that such a message was sent or received. I note the tenant sent in many photographs as evidence but never included copies of this text or any receipt for her security deposit.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove that there was a mutual agreement to end tenancy and because the tenant violated the agreement, he incurred costs of moving expenses for another tenant to whom the suite was promised. I find insufficient evidence to support this claim for moving costs. No written agreement was provided in evidence

and the tenant denied there ever was such an agreement. I dismiss this portion of the landlord's claim. Likewise, I find insufficient evidence to support his claim for the security deposit that he had to refund to the other tenant because this tenant did not vacate. I dismiss this portion of his claim.

In respect to the lock for the laundry room, I find it is the landlord's responsibility under section 25 of the Act to rekey locks for new tenants at his own expense. The landlord was unable to give a reason why he had no duplicate key and required two tenants to share one key to the laundry room. I find insufficient evidence that this tenant violated the tenancy agreement or the Act by not being available to give a key to the other tenant to enter the laundry room. I find the landlord not entitled to recover costs of a new lock for the laundry room. I dismiss this portion of his claim.

On the tenant's application, the onus is on them to prove on the balance of probabilities that they are entitled to a rent rebate or refund equal to one year's rent (\$7,000). I find insufficient evidence submitted by them that the landlord by act or neglect violated their tenancy agreement or the Act. I find the landlord's evidence credible that there was some leaking from a balcony extension but the tenants did not submit written complaints and only mentioned it as a concern in January 2016. I find the landlord acted diligently to have this investigated and repaired starting in February 2016. Given the rainy season, I find this is not an unreasonable length of time for a contractor to repair a torched on roof which requires several consecutive dry days. I find insufficient evidence that this caused mould problems and made the tenant ill. Although she submitted many photographs, I find they do not show conclusively that mould is present. It could be dust or dirt. Although her doctor's note advised she was being investigated for asthma, it does not say her living environment was tested and had mould that contributed to the asthma. I dismiss the tenant's claim for rent refund.

In respect to their security deposit, I find insufficient evidence that the security deposit was ever received by this landlord or that the tenant paid it to a previous landlord. She submitted no receipts. If she has a receipt, she may have a claim against a previous landlord to whom it was paid. I dismiss this portion of her claim.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for this application.

I find the landlord entitled to an Order of Possession and a monetary order as calculated below. I find them entitled to recover their filing fee. I give the landlord leave to reapply within the legislated time limits for any further damage when the tenants have vacated.

Calculation of Monetary Award:

Unpaid rent and utilities (\$1400+150)	1550.00
Filing fee	100.00
Total Monetary Order to Landlord	1650.00

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 13, 2016

Residential Tenancy Branch