



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR MNSD MNDC FF

### **Introduction:**

Both parties made Applications and attended the hearing. The landlord gave sworn testimony that he served the Notice to End Tenancy dated March 3, 2016 to be effective March 13, 2016 by posting it on the door. Both parties acknowledged service of each other's Application. The landlord requests 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 requests to cancel the Notice to End Tenancy for unpaid rent and 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 the amount? If so, is the landlord entitled to an Order of Possession and a monetary order for unpaid rent and filing fees?

Or is the tenant entitled to any relief and to recover filing fees for their 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 November 1, 2015, that rent is \$2550 a month plus hydro and a security deposit of \$1225 was paid on October 26, 2015. It is undisputed that the tenant has not paid rent for March or April 2016 but disputes that they owe a further \$515 from December 2015. They filed their Application on March 8, 2016.

The tenant said she had forwarded her portion of the rent by email transfer. The landlord agreed that he had received two email transfers from her, each in the amount of \$1,000. However, he said a male who had moved in had not paid the \$515 owed from December 2015 although he had promised he would. The tenant said she was not aware of this until March 2016 but the landlord said the other tenant, her Aunt, was fully aware of the situation.

The tenant said they had not had use of the den in the unit for the landlord had his items stored there. The landlord said it was advertised as a furnished two bedroom apartment as he was aware he had to store some items in the den. However, he said the tenants have also stored items in the den. The tenant said she could not remember how the unit was advertised. She also said the landlord had not done repairs to a bathroom fan that ran continually. She provided no evidence of written requests for him to do repairs.

In evidence is the Notice to End Tenancy for unpaid rent and proof of service.

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 that the landlord is entitled to an Order of Possession. There is outstanding rent. Although the Tenant made application in time pursuant to Section 46 to set aside the Notice to End a Residential Tenancy, I find section 26 of the Act provides a tenant must pay rent on time, whether or not a landlord fulfills their obligations under the Act. I find the landlord entitled to an Order of Possession effective April 30, 2016 as requested.

#### **Monetary Order**

I find the weight of the evidence is that there are rental arrears in the amount of \$515 for December 2015, \$1550 for March 2016 and \$2550 for April 2016 plus hydro of \$60 owed for March and April. I find the landlord entitled to a monetary order for \$4675. Although the tenant contended she did not know of the outstanding \$515 from December, I find there were two tenants in the unit plus at least one other occupant and various amounts were paid by each of them. I found the tenant confused about the amounts paid by the others although she accounted clearly for her own payments and the landlord acknowledged receipt of them.

Although the tenant complained of a repair that was not done and that they had not full use of the unit, I find insufficient evidence to support her complaints. She could not remember if the unit had been advertised as including the den or not. She also

provided no documentary evidence of any complaints to the landlord about repairs and did not mention either of these complaints in her Application to give the landlord an opportunity to provide evidence to respond to them. I dismiss the tenants' Application.

**Conclusion:**

I dismiss the Application of the tenant in its entirety and find they are not entitled to recover filing fees due to their lack of success.

I find the landlord is entitled to an Order of Possession effective April 30, 2016 as requested and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Unpaid rent Dec. 2015 + March-April, 2016	4615.00
Unpaid hydro March & April	60.00
Filing fee	100.00
Less security and pet damage deposits (no interest 2015-16)	-1225.00
<b>Total Monetary Order to Landlord</b>	<b>3550.00</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 20, 2016

---

Residential Tenancy Branch