



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. The tenant confirmed receipt of the 10 Day Notice to End Tenancy dated May 6, 2016 to be effective May 16, 2016 posted on his door. They confirmed receipt of each other's Application for Dispute Resolution by registered mail although the tenant was reluctant to admit it until I researched it on the Canada Post website. 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 to cancel the Notice to End Tenancy for unpaid rent and to recover the filing fee for this application.

Issue(s) to be Decided:

Is there unpaid rent? If so, what is the amount and is the landlord entitled to an Order of Possession and to recover filing fees also?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. This was a very contentious hearing with the parties having to be reminded frequently to not interrupt each other. It is undisputed that the tenancy commenced in March 2011, it is now month to month, rent is \$900 a month and a security deposit of \$450 was paid in March 2011.

In a recent previous hearing on April 21, 2016, the tenant was awarded \$150 for an emergency repair and filing fee which could be deducted from his rent. He said he

chose to deduct this from rent for May 2016. He advised the landlord's agent by email on April 21, 2016 that they could drop off the \$150 which would save him the job of cancelling May's rent cheque. The agent replied that the landlord would address the monies owed when they received the Decision. She recommended that he not stop payment of May's rent cheque which would put him at risk of being late with his rent payment again. He replied stating his willingness to go back to arbitration and said his May cheque would be \$150 less. On April 21, 2016, he also emailed the landlord and said he had contravened the Decision made that day by contacting his work phone and leaving a message and objecting to a house inspection. In evidence are several emails showing requests for payment of rent on October 5, October 6 and 7, 2014 and on February 1, 2, 25 and on March 2. No year is noted in the February and March emails but some of them relate to problems with getting cheques. The tenant said he gave post dated cheques to the landlord but he has not paid rent for June 2016. He said the landlord would not communicate with him by email and he did not know if the landlord had a cheque for June. He said there is a rent increase but it is effective July 2016. He said the landlord knew where he lived and could come down. He said he did not want to go to the landlord's residence because of their problems and wants to communicate by personal email.

The landlord said the tenant, contrary to instructions, cancelled his cheque for May 2016 and the bank charged him (the landlord) \$50 for that. He issued the 10 Day Notice to End Tenancy on May 6, 2016. In addition, he said the tenant owes \$900 for June rent. He said he did not receive the Decision dated June 21, 2016 from the Residential Tenancy Branch and was not prepared to accept less rent for May until it was received as stated by email to the tenant. He applies for an Order of Possession and a monetary order for \$750 for May plus \$50 fees, plus \$900 for June and for the filing fee.

The tenant provided evidence that he had obtained a monetary order from the bank for \$750 on April 29, 2016 and an express post receipt. The landlord said he never received this. On checking the postal website, it was found that it was "redirected to recipient's new address". The landlord said he has been at his same address for many years. He is at home most of the time and no registered mail has been delivered to him. Further checking on the postal website revealed that the signature option was not requested and the site just states "The copy confirms to the delivery date (May 2, 2016) and signature of the individual who accepted and signed for the item..." Inspection of the postal slip shows the tenant inserted the wrong postal code; it is his own postal code in a different municipality. The landlord pointed out that he never got May's rent whether or not the tenant mailed it and the Notice to End Tenancy states his address which has been the same for many years.

The tenant pointed to a note in his evidence dated April 29, 2016 noting items about keys and number plates of cars. The second page of the note states the conclusion of the Decision on April 21, 2016 that he might recover \$150 by deducting it from his rent. He said there was a meeting with the landlord on April 30, 2016. First he said he did not give this note to the landlord then but then said he did. The landlord said he came with a realtor on April 30, 2016, the tenant was threatening, he never mentioned he was cancelling the rent cheque for May and never mentioned post dated cheques for June. He gave the landlord no note but did fill in documents with the license numbers of his cars because there was an issue. The tenant said he did not understand why June's rent cheque was not cashed and the landlord was not communicating with him.

In evidence is the Notice to End Tenancy for unpaid rent, a note from the tenant, a copy of a monetary order to the landlord for \$750, an express post mailing document and emails mostly regarding rent cheques. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession:

Section 26 of the Act requires a tenant to pay rent when due, whether or not the landlord fulfills their obligations under the Act. I find the tenant has not paid rent for May 2016 in the amount of \$900. A deduction of \$150 was ordered on April 21, 2016 to be applied to future rent. Although the tenant provided evidence of a bank draft made out to the landlord, I find insufficient evidence that this was provided to the landlord. It was sent to a postal code in another municipality which is the tenant's own postal code. I find the landlord has lived at the same address for many years and the correct postal code was on the Notice to End Tenancy. No signature was required according to the website so hypothetically, it could have been delivered to the tenant's address or to another recipient. I also found the tenant to be inconsistent in his statements in not admitting service of the landlord's Application by registered mail and in his story of the meeting with the landlord on April 30, 2016. I find he had opportunity then to discuss his rent for May and provide it to the landlord rather than cancelling a cheque with added costs. As the Decision was mailed after April 22, 2016, I find it credible that the landlord had not received it and I find the tenant was unnecessarily confrontational in insisting he take the \$150 off May rent and cancelling May's cheque after being advised not to do so until the landlord received the Decision. I find the landlord entitled to an Order of Possession effective July 1, 2016 as requested.

Monetary Order:

I find the landlord entitled to a monetary order for unpaid rent for May and June in the amount of \$900 for each month, less \$150 deduction as awarded in the previous arbitration. I find him entitled to recover \$50 for the bank charges for the cheque cancelled by the tenant even after the email advice not to do this. I find the landlord also entitled to recover his filing fee.

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 due to his lack of success.

I find the landlord entitled to an Order of Possession effective July 1, 2016 as requested and to a monetary order as calculated below. I find him entitled to retain the security deposit to offset the amount owing and to recover the filing fee.

Calculation of Monetary Award:

Rent arrears and over holding rent	1800.00
Bank charges	50.00
Less amount awarded in prior arbitration	-150.00
Less security deposit (no interest 2009-16)	-450.00
Total Monetary Order to Landlord	1250.00

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: June 23, 2016

Residential Tenancy Branch