



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

Both parties made applications and attended the hearing. They gave sworn testimony of personal service of the Notice to End Tenancy dated November 2, 2016 and each other's Application for Dispute Resolution. 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 or over-holding rent;
- b) An Order of Possession pursuant to sections 46 and 55 or pursuant to section 45 as the tenant gave a Notice to End Tenancy and has not moved out;
- 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 for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) To make repairs to the property pursuant to sections 32 and 33;
- g) A monetary order or rent rebate as compensation for repairs not done to the property;
- h) To set limits on the landlord's entry into the property pursuant to section 29; and
- i) 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 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 relief? Has the tenant proved on the balance of probabilities that they are entitled to a rent rebate or compensation for water problems in the unit and

an overcharge of electricity for other's use? 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 July 1, 2016, that rent was \$1500 a month plus utilities and a security deposit of \$500 was promised to be paid. It is undisputed that the tenant has not paid rent for November 2016 and vacated on November 25, 2016.

The landlord claims:

\$1500: unpaid rent for November 2016

\$73.47 for printer cartridges for work on the application

\$375: manager's time for preparing the application

\$200: to remove some very big logs which had been dumped there by a tenant friend.

The landlord said some of the lesser logs were taken away but there are several very large ones which will take more than one man to move. Her handyman charges \$100 for a dump run and he will have to hire a couple more men to do this. The tenant agreed there were some large logs left but said they had removed the majority and some had been cut up for other tenants' use; she said some wood had been left by previous tenants. The landlord said there was some around the camp fire but these logs are different, they are so big.

The tenant claims:

\$3,000: for rebate of half of the rent for foul drinking water and not being able to close one window.

\$684.97: payment of complete hydro bill because the landlord did not inform them that their electric supply would be used for the water pump which the other cabin also uses.

Both parties agreed there are 3 cabins on this lot serviced by the same well and water pump. The tenants' cabin is the largest, the second cabin is occupied by a single man and the third cabin is unoccupied and undergoing renovations. The third cabin has no water or electricity but the tenant said water and an extension cord were run from their cabin to service the third cabin while construction was underway. The landlord said any use was miniscule as the workman has not been there often. She said she would have supplied the extension cord and water from her home which is next door but the tenants never complained.

When the tenants objected to their electric being used to turn on the pump from time to time, the landlord did research on the internet (included in evidence) and found that average charges for such a pump averaged \$4 to \$14.26 a month so they allowed the tenant a deduction of \$25 from their rent.

It is undisputed that the tenant paid half of one month's rent for August and paid \$1500 for September. They paid \$1649.72 for October calculated as follows:

Owed: \$2000 (\$1500 rent +\$500 security deposit)

Deductions: \$12.50 Aug.+\$25 Sept+ \$25 Oct. as allowed for hydro for pump
\$109.38 + \$78.40 (total \$187.48) to pay for pump repair
\$100 for fixing pump and driving etc. all included

The landlord said she had left the tenant from the smaller cabin in charge. The tenants said they were not notified of this arrangement and were without water for four days so they worked on solving the problem. The other tenant helped with the repair.

The tenants said they had complained since moving in about the foul smell of the water and a child who visited had stomach problems afterwards. They said they boiled the water as the tenant was pregnant and the pump company advised them to do this and the male tenant had also some problems. The landlord said she supplied a filter when the tenants first complained and she had another if needed. However, they did not complain again until October 20, 2016 when they appeared to be having financial issues. She had the water tested and the test result is in evidence. Furthermore, the landlord said she had lived in the tenants' unit for 6 years and a friend had lived in it for another 6 years and they had no water issues. She pointed out that this is the hot springs area where water smells of sulphur but there is nothing wrong with it.

She said other tenant complaints were also made on October 20, 2016 and they had problems accessing the property because of the tenants' two dogs that bit the newspaper person and the landlord.

In evidence is the Notice to End Tenancy for unpaid rent, many emails between the parties, hydro bills, written submissions of both parties, internet research on hydro usage and water test results.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The tenant vacated on November 25, 2016 so possession of the premises is no longer an issue. I find there was no rent paid for November 2016 so I find the landlord entitled to recover unpaid rent of \$1500. As explained to the parties in the hearing, section 72 of the Act permits the filing fee to be recovered but not other charges for the application process. Therefore I find the landlord not entitled to recover her printing cartridge costs or her time for preparing the application.

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 on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that the tenant allowed a friend to dump some logs on the property and left several very large ones to be removed by the landlord. The landlord's credibility was supported by the statements of the tenant regarding the logs. I find the landlord's estimate of \$200 reasonable to hire her handyman and helpers to remove these logs. I allow the landlord \$200 for this work.

In respect to the tenants' claim, I find insufficient evidence that the hydro for the pump use and intermittent use of some workmen would cost more than \$25 a month. I find the weight of the evidence is that this would cost less. As the tenant already deducted these amounts from their October rent, I find they have been sufficiently compensated for any extra use of hydro. I find they already deducted money for fixing the pump and their travel time from their October rent so they have been sufficiently compensated. I

find the landlord candidly admitted she did not inform them prior to the commencement of the tenancy but I find when the tenants drew it to her attention, she immediately researched costs and authorized what she considered appropriate deductions from their rent which were more than her research indicated should be the cost. I find the landlord did not fail to meet her obligations through act or neglect so I find the tenant not entitled to recovery of all their hydro costs for the time they were there. I dismiss this portion of their claim.

I find of the \$1649.72 paid in October, \$212.22 of this was for the security deposit so I find this is held in trust by the landlord.

Regarding the compensation claimed for bad water, I find they informed the landlord and she supplied a filter quickly. I find the weight of the evidence is that they did not inform her of continuing problems until October 20, 2016 and she arranged to have the water tested. They had given her a Notice to End their tenancy for October 31, 2016 and she had some problems gaining entry because of the tenants' dogs. I find the weight of the evidence supports the landlord's testimony that she was not informed of continuing problems as the tenant's email notice in early October said only they had decided to move back to their former town and mentioned no water issues. She had no request and no opportunity to install the second filter she bought. I find it most likely that the foul smell of the water was due to the sulphur in the hot springs area as the tenants described it as a smell 'like rotten eggs' which is a common sulphur smell. I find insufficient evidence that the water was harmful to humans and caused any physical problems of the tenants. They provided no medical information to support their contentions. I find their problems, if they existed, were not due to any act or neglect of the landlord or her violation of the tenancy agreement of Act so I find them not entitled to compensation of half of each month's rent for the time they lived there. I dismiss their application.

Conclusion:

I dismiss the application of the tenants in its entirety without leave to reapply and I find them not entitled to recover filing fees for the application.

I find the landlord entitled to a monetary order as calculated below. I find her entitled to unpaid rent for November 2016 and compensation for log removal. I find her entitled to retain the security deposit to offset the amount owing and to recover the filing fee.

Calculation of Monetary Award:

Unpaid rent for November 2016	1500.00
Log removal estimate	200.00
Filing fee	100.00
Less remainder of security deposit	-212.22
Total Monetary Order to Landlord	1587.78

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: December 21, 2016

Residential Tenancy Branch