



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

Both parties attended this joint hearing with witnesses. All gave sworn testimony. The parties confirmed the tenant was served the 10 Day Notice to End Tenancy dated December 6, 2016 and the Application for Dispute Resolution by registered mail. The landlord confirmed receipt of the tenant's Application by personal service. 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, fees and damages;
- 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 pursuant to the Act for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent; and
- f) A monetary order or rent rebate as compensation for losses due to a mouse problem that was not eradicated after notification to the landlord.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent, fees and other damages are 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 any relief? Has the tenant proved on the balance of probabilities that the landlord has neglected to fulfill their obligations under the Act? If so, to how much compensation have they proved entitlement?

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 in June 1, 2009, that rent is \$1333.00 a month as of May 16, 2016 and a security deposit of \$625 was paid in June 2009. It is undisputed that the tenant has not paid rent for December 2016 or January 2017 but made an Application on December 14, 2016 to request compensation for losses and to cancel the Notice to End Tenancy for unpaid rent.

The landlord said the tenant owes \$2666.00 in unpaid rent for December and January 2017 plus \$200 in unpaid late and NSF fees charged at \$25 a time. In addition, after notice to the tenant, they paid \$105 and \$89.25 to have junk and an old mattress removed.

The tenant said the landlord should not have removed the items that were outside. She had left them outside temporarily to try to get rid of the mice and smells from the infestation. She said the stench from mice feces and urine was intolerable and she could hear the mice shrieking and running in the bedroom. She said the landlord has neglected to take care of the mouse problem and she seeks compensation for lost food, hydro for excessive washing, for her lost and damaged furniture and blankets and towels. She said she had computer problems and has just now been able to recover her evidence to support her allegations. She asks for more time.

The landlord said they absolutely did not neglect the tenant's problems with mice. He said the tenant notified them on September 29, 2016 and pest control attended on October 3, 2016 and made a follow-up call on October 12, 2016. They said they were not notified of a continuing problem after the second visit. They said the tenant had birds and a snake as pets and there was seed and food left out in the unit which attracted the mice. The tenant denied there was more than one visit by pest control and challenged the building manager to prove he had inspected her unit when he said he did and that pest control had come more than once.

In evidence is the Notice to End Tenancy for unpaid rent, invoices for junk and mattress removal, a mouse report on September 29, 2016, a Notice to Enter for October 3, 2016 for the building manager and pest control, an Invoice for the Oct. 3 visit and photographs of the unit at that time, a Notice to Enter for October 10, 2016 for the building manager to inspect to see if preparation work for pest control was done, a Notice to Enter for October 12, 2016 to place bait and traps by pest control, a rent ledger and the tenancy agreement. 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 states a tenant must pay rent on time whether or not the landlord fulfills their obligations under the Act. I find the tenant never paid rent for December 2016 or January 2017. I find the tenancy ended on December 16, 2016 in accordance with the 10 Day Notice to End Tenancy. I find the landlord entitled to an Order of Possession effective January 31, 2017 as requested.

Monetary Order:

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 applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that the tenant owes \$2666.00 in unpaid and over holding rent for December 2016 and January 2017. In addition, I find she owes \$200 in late and NSF fees as set out in her tenancy agreement (\$25 each time) and the rent ledger in evidence. I find the weight of the evidence is that the tenant violated the tenancy agreement and rules by having items stored outside her unit contrary to Rule 22 of her tenancy agreement. I find she was warned by letters posted on her door on August 11, 2016 and on August 24, 2016. I find her violations caused the landlord to incur costs when the debris was removed from her patio in September 2016 at a cost of \$105 and after further warnings, the landlord had an old mattress removed on October 31, 2016 at a cost of \$89.25. I find the landlord entitled to recover the costs of the debris and mattress removal.

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim. I find insufficient evidence to support her claim for loss or damage suffered due to act or neglect of the landlord. She states she can submit supporting evidence now that her computer is repaired. I give her leave to reapply within legislated time limits to prove that the landlord through act or neglect caused her losses and to support her claim for compensation.

Conclusion:

I dismiss the application of the tenant to cancel the Notice to End Tenancy for unpaid rent. The tenancy was at an end on December 16, 2016. An Order of Possession effective two days from service is issued to the landlord and a monetary order as calculated below which includes recovery of their filing fee.

I dismiss the application of the tenant for compensation but give her leave to reapply within the legislated time limits for compensation for damage and loss.

Calculation of Monetary Award:

Rent arrears and over holding rent	2666.00
NSF and late fees	200.00
Junk removal and mattress removal	194.25
Filing fee	100.00
Less security deposit (no interest 2009-17)	-625.00
Total Monetary Order to Landlord	2535.25

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: January 18, 2017

Residential Tenancy Branch