



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. He said the 10 Day Notice to End Tenancy dated November 14, 2016 to be effective November 24, 2016 was served by posting it on the door on November 14, 2016 and the Application for Dispute Resolution was served personally to the tenant. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. The evidence is that the tenancy commenced in September 2015, a security deposit of \$375 was paid and rent is currently \$750 a month. The landlord explained that the female tenant's rent comes from social assistance and her partner pays the other \$375 a month. Now the tenant is telling him that he has to go down to get the cheque. He understands that even if the cheque is in his name, she must pick it up and give it to him.

After he served the 10 day Notice for \$380 arrears in October 2016, he said the tenant made two payments of \$375 in December 2016. He accepted the payments but did not limit them only for the tenant's use and occupancy or advise her that her tenancy was not reinstated by his acceptance. He said he does not really need an Order of Possession but wants a monetary order for unpaid rent in the amount of \$375 plus filing fee. He said he did not know he had to file his documents for evidence. 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 not entitled to an Order of Possession. Although there is outstanding rent, I find the landlord accepted rental payments subsequent to the Notice to End Tenancy.

According to Residential Policy Guideline 11, if a landlord accepts money after the effective date of the Notice (here November 24, 2016), the intention of the parties comes into issue. Since the landlord did not give a receipt for the payments saying “accepted for use and occupancy only”, it implies the landlord was waiving his Notice to end Tenancy. It appears the tenant may have believed that her tenancy continues as she submitted no documents in dispute. Also the landlord said in the hearing he did not really want to end the tenancy, he just wants his rent paid promptly. I find the landlord not entitled to an Order of Possession.

As discussed with the landlord in the hearing, pursuant to section 26 of the Act, it is the tenant's obligation to pay her rent to the landlord on time. The landlord does not have an obligation to go to social assistance to obtain the tenant's rent. The landlord does have an obligation to file all relevant evidence when he files his Application, for example the 10 Day Notice to End Tenancy, his rental receipts and a rental ledger if possible.

Monetary Order

I find that there are rental arrears in the amount of \$375 as of January 2017.

Conclusion:

I find the landlord is not entitled to an Order of Possession. I find he is entitled to a monetary order as calculated below and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent owing since October 2016	375.00
Filing fee	100.00
Total Monetary Order to Landlord	475.00

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: January 05, 2017

Residential Tenancy Branch