



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. They confirmed that a 10 Day Notice to End Tenancy dated December 4, 2016 to be effective December 15, 2016 was served by posting it on the door. They confirmed receipt of each other's Application by registered mail. I find the documents were legally served pursuant 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 Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) A monetary order or rent rebate as compensation for neglect of repairs to the property and for storage locker fees;
- f) Compensation for significant disturbance of their reasonable enjoyment by harassment contrary to section 28;
- g) For permission to change the locks and restrict the landlord's entry into the rental unit; and
- h) 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 any relief? Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed and 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 February 1, 2016, that rent is \$1500 a month inclusive of heat and a security deposit of \$750 was paid. It is undisputed that the tenant has not paid rent for December 2016 or January 2017 and is still residing in the unit. She states that she received an email Notice to End Tenancy because the property was

sold, she was told to take it seriously by administrative staff in the Residential Tenancy Branch so she withheld December 2016 rent pursuant to section 49 provisions on such a Notice. Both parties in their documents said it was a fixed term lease to January 31, 2017.

The landlord said he never gave a formal Notice to End Tenancy for landlord's use of the property pursuant to section 49 of the Act. He said he put the property for sale and had an unconditional offer. However, the purchaser wanted earlier possession. He made a financial offer to the tenant but she declined to end the tenancy earlier so the deal collapsed and his deposit was returned. The tenant said they did not accept his offer for they could not find any other suitable housing. The landlord said the first formal Notice to End Tenancy that he served on the tenant is the 10 Day Notice for unpaid rent. He said she has not paid December rent and paid only half of January 2017. He claims \$2250 in unpaid rent. Both parties agreed the Order of Possession might be effective January 31, 2017 as the tenant has arranged to move.

The tenant claims \$1050 for a rent rebate. She said the landlord refused to get the gas fire lighted in the unit so she paid increased electric costs for baseboard heating only. The parties agreed that the gas fire is included in the rent for this is a strata amenity. The landlord said it was an oversight to check off that heat was included in the rent as the tenant was aware that electricity had to be put in their names and the baseboard heat was electric. The tenant said she is only claiming the difference in electric costs that occurred during the cold months which she claims were caused by the lack of the gas supplement. She enclosed a chart listing her electric bills for several months.

The tenant also claims 2 months of storage fees for a locker. When they moved in from a larger place, they had a lot of items in boxes. The tenants could not unpack quickly due to physical limitations. The landlord said when he inspected the unit, he was shocked at the amount of boxes and items in the unit because of fire and safety hazards. He said he is ultimately responsible for any hazards posed by his tenant. He offered to pay for a storage locker but they declined. The tenant said she doubted he would continue paying and did not want to take on the liability. Then later in the tenancy, she said she did not want to deal with packing items, moving them, then moving them back to unpack them. She said she went to the Fire Department and was assured that her contents were not a fire hazard. She forwarded this letter to the landlord who forwarded it to his insurer who was threatening to cancel his insurance. The insurer replied that fire hazards and insurance are two different things and cancelled his insurance. He tried again in August by giving Notice to inspect, taking photographs and forwarding them to the insurer. They denied insurance again per his email in evidence. He currently has no insurance on the unit which alarms him. The tenant said the insurer never inspected the unit and were just given small photographs. The tenant claims compensation for harassment of the landlord relating to her moving her goods.

The tenant also claims compensation for her lost goods. She said they could not afford to continue paying for the storage locker so they lost a lot of possessions. She said many were many years old and she has no invoices or other means to show their value.

The tenant emphasized how stressful this has been on her mother and her.

Among other items in evidence are the Notice to End Tenancy for unpaid rent, many statements of the parties, emails, a hydro statement and a Fire Department email.

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 the landlord entitled to an Order of Possession. There is outstanding rent and the tenant did not pay the rent after being served the 10 day Notice to End Tenancy. While she may have done this because she misunderstood the landlord's intention, I find the email on which she relied is not a Two Month Notice to End Tenancy. The email states "...your email has confirm my decision to end the lease as scheduled in January 2017". In fact, I find the tenant was well aware that this was not a Two Month Notice to End Tenancy for she replied on November 30, 2016 setting out the provisions in section 49 of the Act. I find both she and the landlord were under a misunderstanding that they had a fixed term lease. It is a month to month lease and as such, would have continued without a formal Notice to End Tenancy. Section 52 of the Act states a Notice to End Tenancy given by the landlord must be in the approved form. I find the tenant was not entitled to a free month's rent and she owes the landlord \$1500 for December 2016.

I find the evidence is that the tenant paid only \$750 rent for January 2017 so they owe a further \$750 in over holding rent to the landlord. I find the landlord entitled to a monetary order for \$2250 as claimed.

Monetary Order:

The onus is on the applicant tenant to prove on a balance of probabilities their claim

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.

I find the parties entered into a tenancy agreement which stated it included heat which the tenant interpreted as including the gas fireplace for which the strata provided free gas. I find they requested the landlord a number of times to get the fireplace working for them but he did not and so violated their lease agreement. The tenants allege they spent considerably more on hydro because of having to use the baseboards exclusively for heat. I find the summer months cost approximately \$38 a month which increased to \$41 a month and then to \$48 a month October and November. I find the heating likely cost \$10 a month based on these numbers as lights and appliance cost would likely be similar to summer months even in the winter. I allow the tenant a rebate of \$10 a month from February to April and from September to January (8 months at \$10 a month= \$80)

In respect to the claim for storage costs and harassment, I find insufficient evidence that the landlord violated the Act or the tenancy agreement. I find the lease did not provide for free storage so I find the landlord not responsible for the tenants' storage locker fees. I find the landlord acted legally when inspecting the suite and being concerned about health and safety issues. I find his requesting the tenants to store excess goods which did not fit in this one bedroom unit does not amount to harassment. I find his sincerity is illustrated by his offer to pay for a storage unit and I find the excuses of the tenant for not accepting the offer of a free storage unit are unfortunate as they put themselves to extra expense. I find the landlord's concerns were legitimate as his insurance has been cancelled because of the amount of goods stored in the unit.

I dismiss this portion of the tenant's claim.

In respect to their claim for lost belongings, I find insufficient evidence to support their claim. The evidence is they lost the good because they could not pay for the locker. I find this is through no fault of the landlord as he did not breach an agreement with them or the Act. I also find insufficient evidence of the value of the goods they lost. I find they have not proved their claim on a balance of probabilities or met the test set out in section 7 of the Act (quoted above) so I dismiss this portion of their claim.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 31, 2017 as agreed and to a monetary order including the filing fee as calculated below. The security deposit of the tenant will remain in trust to be dealt with pursuant to section 38 of the Act after the tenant vacates.

I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find them entitled to a rent rebate of \$80 and to recover half of their filing fee due to their limited success (\$50). I dismiss the remainder of the tenant's application without leave to reapply. The tenant's rebate and filing fee will be deducted below from the monetary order granted to the landlord.

Calculation of Monetary Award:

Unpaid rent and over holding rent ; Dec. & Jan.	2250.00
Filing fee	100.00
Less rent rebate to tenant	-80.00
Less half of filing fee to tenant	-50.00
Total Monetary Order to Landlord	2220.00

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 19, 2017

Residential Tenancy Branch