



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR ERP RP RR PSF MNDC MNSD FF

Introduction:

Only the landlord attended and gave sworn testimony. She said she served personally with a witness both the 10 Day Notice to End Tenancy dated January 6, 2016 and the Application for Dispute Resolution. She acknowledged service of the tenant's application also. 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 7, 46 and 67 for unpaid rent and damages;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security and pet damage deposits pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for neglect of repairs to the property and neglecting to monitor the behaviour of other tenants' which is jeopardizing his health, safety and peaceful enjoyment;
- g) A rent rebate for withdrawal of a service promised in the tenancy agreement; 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 he proved on the balance of probabilities his claims against the landlord?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. She requested that the address of the unit be checked for correctness; this was done. It is undisputed that the tenancy commenced August 1, 2015, that rent is \$850 a month and a security deposit and pet damage deposit totalling \$850 was paid (\$475+\$475). It is undisputed that the tenant has not paid rent for January or February 2017 but he made an Application January 9, 2017 to request to cancel the 10 Day Notice To End Tenancy for unpaid rent and to make other claims. He did not attend the hearing to support his claims.

The landlord requests an Order of Possession effective as soon as possible. She said no rent has been paid since the 10 Day Notice was served and the tenant owes \$1700 total in rent for January and February 2017.

The tenant provided some documents and photographs to support his claim but did not attend to explain.

In evidence is the Notice to End Tenancy for unpaid rent, proof of service, the tenancy agreement, photographs and emails. 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. Section 26 of the Act requires a tenant to pay rent on time whether or not the landlord fulfills their obligations. I find the tenant has not paid rent for January and February 2017 so I find the tenancy ended on January 16, 2016 pursuant to the 10 Day Notice to End Tenancy and section 46 of the Act. An Order of Possession is issued to the landlord effective two days from service.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has proved the tenant owes \$1700 in unpaid rent so she is entitled to a monetary order for the unpaid rent.

In respect to the tenant's claim, I find the landlord's documentary evidence and oral testimony refute his claims and he did not attend the hearing to support his claims. I find the garbage in his photographs was likely his as the upstairs tenants contend. I find

insufficient evidence to prove that the landlord neglected repairs to the property or neglected to monitor the behaviour of other tenants. I find insufficient evidence that there was withdrawal of a service promised in the tenancy agreement. I find the landlord's emails and texts to him show that she responded promptly to his complaints. I find the upstairs tenants complained that he disturbed their peaceful enjoyment. I dismiss his application in its entirety.

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.

I find the landlord entitled to an Order of Possession effective two days from service and to recover her filing fee. I find she is entitled to a monetary order as calculated below and to retain the security and pet damage deposits to offset the amount owing. I give the landlord leave to reapply for further and other damages within the legislated time limits.

Calculation of Monetary Award:

Rent arrears January 2017	850.00
Over-holding rent February 2017	850.00
Filing fee	100.00
Less security and pet damage deposits	-850.00
Total Monetary Order to Landlord	950.00

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: February 02, 2017

Residential Tenancy Branch