



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's representative (hereinafter called 'the landlord') attended the hearing and gave sworn testimony. He stated that the 10 Day Notice to End Tenancy dated March 8, 2017 to be effective March 18, 2017 was served by posting it on the door and the Application for Dispute Resolution was served personally. Since the 10 Day Notice was served by posting it on the door, it is deemed to be received three days later or March 11, 2017. I find the effective date on the Notice to End Tenancy is automatically corrected to March 21, 2017 pursuant to section 53 of the Act as a 10 Day Notice must give a full 10 days notice. The landlord said the tenant stopped payment on the March rent cheque and said he was leaving to go to another country. 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;
- c) An Order that they might retain the tenant's contents; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession, to keep the tenant's contents and a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord attended although the tenant was served with the Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 1, 2016 on a fixed term lease expiring March 1, 2017. The lease provided for vacant possession at the end and the parties did not agree to renew it. A security deposit of \$315 was paid and rent was \$630 a month. The landlord said the tenant owes \$630 for March 2017 rent as he stayed in the unit after the lease was ended and the suite could not be rented for that month. The landlord requests an Order of Possession for her records and to retain the security deposit to offset the amount owing. The landlord also requests \$642.50 for her time and gas expense in dealing with this Application and requests an order to keep the tenant's contents which he has abandoned and which appear to be of little commercial value. He has left the country and she has no forwarding address. The tenant submitted no documents to dispute the amount owing and did not attend the hearing.

In evidence is the Notice to End Tenancy and proofs of service, many text messages, the tenancy agreement and photographs. A CD of conversations was also provided. 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 entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

Monetary Order

I find that there is over-holding rent of \$630 for March 2017 as the tenant continued to occupy the suite. I find the landlord entitled to retain the security deposit to offset the amount owing. Regarding the amount of \$642.50 claimed for the expense of processing the application, I find section 72 limits the award for the process to recovery of the \$100 filing fee.

I find the weight of the evidence is that the tenant has abandoned his belongings. I have no jurisdiction to order retention of the tenant's property. The landlord said they are of little commercial value. I find abandoned belongings must be dealt with according to Residential Tenancy Regulation sections 24 to 27 inclusive. As these items may be of little commercial value, section 25(2) may be the most applicable section.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Over holding rent March 2017	630.00
Filing fee	100.00
Less security deposit (no interest 2016-17)	-315.00
Total Monetary Order to Landlord	415.00

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: April 19, 2017

Residential Tenancy Branch