



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD MNDC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. Each confirmed receipt of the 10 Day Notice to End Tenancy dated April 5, 2017 to be effective April 15, 2017 and of the One Month Notice to End Tenancy for Cause dated February 26, 2017 to be effective April 30, 2017. The landlord said they served the Application for Dispute Resolution and Amendment personally and the tenant confirmed the landlord served his papers personally with the upstairs tenant as witness. 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;
- b) An Order of Possession pursuant to sections 46 or 47 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.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to a monetary order for unpaid rent and to recover filing fees also?

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 March 2009, that rent is \$850 a month and a security deposit of \$425 was paid in March 2009. The tenant agreed he had not paid rent for April 2017. He said the landlord wanted to evict him and he thought he was entitled to a free month's rent. The tenant contended he had not been given receipts for rent over the years but he might have been late in paying a few times. He also said he had consent for the dog and it had been there for years.

The landlord had served two Notices to End Tenancy, one under section 46 for unpaid rent in April and the other under section 47 for repeated late payment of rent and having a dog without consent. I elected to hear evidence on the 10 Day Notice for unpaid rent. As it was clear, the rent had not been paid, I declined to consider evidence under the one month Notice. There was no evidence that any Two Month Notice had been served. The landlord filed an Amendment to claim \$850 in unpaid rent as he had not included this in his original Application.

After some discussion about the 10 Day Notice provisions and section 46, the tenant said he would leave May 1, 2017 and return the key.

In evidence is the 10 Day Notice to End Tenancy for unpaid rent, the One Month Notice under section 47 of the Act, proofs of service 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

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 which was April 15, 2017. An Order of Possession is issued effective April 30, 2017 as agreed by the parties.

I decline to consider evidence under section 47 of the Act for cause as it is unnecessary. The tenancy is ended pursuant to section 46 for unpaid rent. Although the tenant claimed he was entitled to one month's free rent, I find no evidence that he was ever served a section 49 Notice to End Tenancy for landlord use of the property. It is through service of such a notice that the landlord's obligation to provide a free month's rent is triggered.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving that the tenant owes rent of \$850 for April 2017. I find him entitled to a monetary order for this amount plus the filing fee.

Conclusion:

I find the landlord entitled to an Order of Possession effective April 30, 2017 and to a monetary order as calculated below. I find the landlord entitled to recover filing fees and to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Unpaid rent April 2017	850.00
Filing fee	100.00
Less security deposit (no interest 2009-17)	-425.00
Total Monetary Order to Landlord	525.00

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 27, 2017

Residential Tenancy Branch