



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR CNR MNDC FF

Introduction:

Both parties attended the hearing and confirmed receipt of the 10 Day Notice to End Tenancy dated April 22, 2017 which was posted on the door. The tenant filed their Application to dispute the Notice on April 28, 2016 and served it on the landlord. The landlord served his Application personally on the tenant (using a third party). I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord requests 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.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- d) To cancel the Notice to End Tenancy for unpaid rent;
- e) For a monetary order for damages; and
- f) To recover the filing fee for this application.

Preliminary Issue:

The landlord notes only a male tenant in his Application whereas the tenant's Application is brought in the names of a male and female tenant. Is the female a tenant? The landlord said the male is the only person on the tenancy agreement so he is the tenant and the female moved in later with her dogs. The male confirmed he is the tenant on the tenancy agreement and the female moved in later. I find the male is the tenant and the female an occupant of the unit so any orders will be issued against the male as tenant.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and he is entitled to a monetary order and Order of Possession? Is the landlord entitled to recover filing fees also?

Is the tenant entitled to any relief on the Notice to End Tenancy? Has the tenant proved on a balance of probabilities that they are entitled to a monetary order for damages such as kennel damage and lost wages and to recover filing fees for the application?

Background and Evidence:

Both parties and the female occupant attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced July 1, 2016, that rent is \$900 a month and a security and pet damage deposit totalling \$900 was paid. The landlord served the 10 Day Notice alleging the tenant owed \$450 in rent for April 2017. The tenant said he paid that half month's rent in April and referred me to some bank withdrawals and receipts in his evidence. The landlord said it was never paid and furthermore rent for May and June has not been paid either. The tenant agreed he had not paid rent for May and June 2017. The landlord requests an Order of Possession and a Monetary Order for unpaid rent. After some discussion, the tenant said they could move by June 14, 2017 and the landlord agreed that effective date for the Order of Possession is acceptable.

The tenant applies to cancel the Notice to End Tenancy and to obtain a monetary order for \$1050 for the cost of panels for the kennel which they allege was damaged by the landlord. The female witness said she brought two dogs with her when she came to live in the home. She said the landlord had to do some digging and was afraid of her older dog so she bought the kennels and erected them. She said the landlord hit them numerous times when he was digging and damaged them. She provided photographs and some quotes to show the cost. The landlord said there is no visible damage on the kennels (which look like chain link fencing). The female witness also said the landlord damaged a trailer which she had on the property. She said it was fine all winter until the landlord started coming around and then it was damaged. The landlord denies damaging the trailer. The female also alleged the landlord entered the home without notice but the landlord said the male tenant allowed him in when he was home on his lunch hour. The tenant requests that I order the landlord not to enter without 24 hour notice and not to harass them prior to them moving.

In evidence is the Notice to End Tenancy for unpaid rent, rent receipts, quotes for kennel panels, photographs and statements of the parties. 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. I find there is outstanding rent. Although the Tenant made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy in time, I find the weight of the evidence is that the balance of \$450 rent for April 2017 was not paid. I find the landlord's evidence credible that it was not paid and I find the April receipt in evidence showed only \$450 (of the \$900 rent) was paid although there was some other writing on the bank withdrawal receipt. I find the landlord's credibility is also supported by the fact that the tenant did not state in his Application to cancel the Notice for unpaid rent that he had paid the April rent in full. I find the landlord entitled to an Order of Possession effective June 14, 2017 as agreed.

Monetary Order

I find that there are rental arrears in the amount of \$450 for April 2017 and over holding rent of \$900 for May. As the effective date for the Order of Possession is not until June 14, 2017, I find the landlord also entitled to recover \$450 for over holding rent for half of June 2017. I find him entitled to retain the security and pet damage deposits to offset the rent owing.

In respect to the tenant's application for \$1050 for damage to kennels and a day's wages, the onus is on them to prove the landlord damaged the kennels. I find insufficient evidence that the landlord damaged the kennels. The landlord denied it and I find the photographs supplied by the tenant are inconclusive. I note the photograph where it is stated they are bent and moved shows a bracket which connects two panels but no visible damage to the panels themselves.

In respect to the landlord's alleged illegal entry into the premises, section 29 of the Act provides a landlord must not enter a rental unit unless (a) a tenant gives permission at the time of entry or (b) the landlord gives the tenant 24 hours written notice that includes a reasonable purpose and the time of entry or if (f) an emergency exists and entry is necessary to protect life or property. I find the weight of the evidence about the one time discussed is that the male was home at lunch time and told the landlord he could enter which fall under section 29(a) concerning tenant permission. I find the landlord must obey section 29 of the Act while the tenants are in residence and only enter with written notice for reasonable purposes.

Conclusion:

I find the landlord entitled to an Order of Possession effective June 14, 2017 and to a monetary order as calculated below. I find the monetary order will be issued only against the male as he is the tenant on the tenancy agreement and the female is an occupant. I find the landlord entitled to recover the filing fee and to retain the security

and pet damage deposits to offset the amount owing. I give the landlord leave to reapply if necessary for further over holding rent and damages.

Rent arrears April 2017	450.00
Over holding rent May 2017	900.00
Over holding rent June 1-14	450.00
Filing fee	100.00
Less deposits	-900.00
Total Monetary Order to Landlord	1000.00

I dismiss the Application of the tenant in its entirety without leave to reapply and find them not entitled to recover filing fees due to lack of success.

I HEREBY ORDER THAT the landlord obey section 29 of the Act and not enter the premises without written notice or bother the tenant before the effective date of the Order of Possession, that is June 14, 2017.

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: June 06, 2017

Residential Tenancy Branch