



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR AS RR MNDC MNSD FF

Introduction:

Both parties attended the hearing. Each confirmed personal service of the 10 Day Notice to End Tenancy dated May 2, 2017 to be effective May 12, 2017. They confirmed they received service of each other's Application for Dispute Resolution. 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 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.

The tenant applies pursuant to the Act for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent pursuant to section 46; and
- f) To obtain permission to rent out rooms in the unit; and
- g) To reduce rent for repairs, facilities or services agreed upon but not provided.

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 should have permission to rent out rooms and reduce rent if not?

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 September 2016, that rent is \$4000 a month and a security deposit of \$2000 was paid.

It is undisputed that the landlord agreed to deduct \$1100 from the security deposit towards rent for April 2017 and now has only \$900 remaining in trust. It is undisputed that the tenant has not paid rent for May or June, 2017.

In a previous hearing on May 10, 2017, the parties reached an agreement and a previous one month Notice to End Tenancy for Cause dated March 29, 2017 was cancelled. One of the terms was that the \$4000 rent for May was to be paid by May 11, 2017. It was not paid. Another term of the agreement was that the tenants would abide by the tenancy agreement and that the only occupants in the home would be the tenants on the written tenancy agreement and their immediate family members. In a letter dated May 12, 2017 in evidence, the tenant tells the landlord she was going to ask for a review on the agreement not to rent out any rooms. However, she did not ask for a review but made this Application.

The female tenant said her partner spoke only French and would like to say something. I told her that I do not speak French but if she had requested a French speaking arbitrator when filing her Application, the Residential Tenancy Branch would likely have accommodated her. At this point she said that she was saying everything he would have said anyway.

The parties had heated discussion in the conference concerning the rental of rooms. The landlord said the tenant had been using them for Airbnb and her original understanding was that the tenants' parents might use the extra rooms. The tenant said they entered into the tenancy agreement with the understanding they could rent out rooms as they could not afford the high rent. There was no written agreement concerning the renting out of rooms. After some negotiation, the landlord agreed to an effective date for the Order of Possession of June 30, 2017 and the tenant agreed that the landlord might advertise the unit for rent for July 1, 2017 and she would accommodate showings to potential tenants with 24 hour written notice.

In evidence is the Notice to End Tenancy for unpaid rent, an email between the parties and a copy of the previous decision. 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 10 Day Notice to End Tenancy dated May 2, 2017 was issued pursuant to section 46 of the Act for unpaid rent of \$4000 for May 2017. Although the tenant disputed the Notice in time, I find the tenant has paid none of the outstanding rent. The tenant contended they had an agreement in the previous hearing. However, I find the

agreement provided the tenant would pay the outstanding rent by May 11, 2017 and they did not so I find they cannot rely on the later agreed date for an Order of Possession. I find the landlord entitled to an Order of Possession effective June 30, 2017. I find the landlord is relying on the tenant's promise to vacate pursuant to this Order and to meanwhile accommodate showings to prospective tenants for July 2017 upon 24 hour written notice of such showings.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord obtained a monetary order for \$4000 for rent for May 2017 in the previous hearing so a duplicate is not issued for May. I find the tenant owes an additional \$4000 rent for June 2017 and the landlord is entitled to a monetary order for this amount. I find her entitled to retain the remaining \$900 of the security deposit to offset the amount owing.

On the tenant's application, the onus is on them to prove on a balance of probabilities that they should obtain permission to rent out rooms and be granted a rent reduction for the time they have been unable to do so. I find insufficient evidence to support their position. They have no written agreement from the landlord that they were allowed to rent out rooms, in fact she denies that this was ever an understanding between them. Furthermore, I find the tenants agreed in the previous Decision dated May 11, 2017 that they would only allow themselves and immediate family members to occupy the home. I find I have no jurisdiction to over turn a previous arbitrator's decision. I dismiss the Application of the tenant.

Conclusion:

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

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was paid for their Application.

Calculation of Monetary Award:

Rent for June 2017	4000.00
Filing fee	100.00
Less balance of security deposit	-900.00
Total Monetary Order to Landlord	3200.00

I HEREBY ORDER THAT the tenant allow the landlord upon 24 hour written notice to show the home to prospective tenants for tenancy commencing July 1, 2017 and to cooperate fully.

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 14, 2017

Residential Tenancy Branch