



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR DRI MNDC FF

Introduction:

Both parties made Applications and both attended the hearing and gave sworn testimony. They agreed the 10 Day Notice to End Tenancy dated June 8, 2017 to be effective June 18, 2017 was served and both their Applications for Dispute Resolution were served personally. I find the parties were 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; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applied for orders as follows:

- c) To cancel the Notice to End Tenancy pursuant to section 46 as the landlord was overpaid some rent and refuses rent for June 2017;
- d) To dispute an Increase in Rent without Notice pursuant to section 43

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a Monetary Order for rental arrears and filing fee? Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 1, 2016 with this landlord; the tenancy had continued from a former owner. A security deposit of \$187.50 was paid and rent is \$375 a month according to the lease in evidence. The landlord said the tenant owes \$1162 from May to August 2017. The tenant said his room mate also pays \$375 a month on a separate lease so it is not a problem if his tenancy is ended for he can continue living with her. The landlord said he had no lease with the room mate but he agreed she has paid \$375 every month. There are no receipts. The landlord said the tenant paid in many partial payments in cash.

The tenant said the landlord illegally raised his rent by \$50 for hydro payable every 2 months. The landlord said there was no rent increase but the tenant wanted to have an air conditioner and offered to pay him \$20 every two months and he did this. The tenant agreed he had installed a portable air conditioner but argued hydro was included in his rent. There was discussion about the tenancy of the room mate as the landlord wanted to end the tenancy of both and said he had no tenancy agreement with her. He took over the tenancies when he bought the home.

In evidence is the Notice to End Tenancy and proofs of service, a lease and monetary request. 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. Although the Tenant made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy, I find he owes rent. Section 26 of the Act requires a tenant to pay rent on time and he has not done this. I find the tenancy ended on June 18, 2017. An Order of Possession is issued effective two days from service. I note this may be enforced to remove this tenant from the unit.

In respect to the landlord's request to evict the tenant's room mate/co-tenant, I find insufficient evidence that she is a co tenant. Residential Tenancy Policy Guideline 13 states:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

I find the lease in evidence has only listed the present tenant with rent of \$375. Therefore, I find insufficient evidence to find the room mate is a co tenant and to issue an Order of Possession against her also.

In respect to the landlord's claim for unpaid rent, I find him entitled to recover \$1162.50 as claimed. I find his evidence credible as his explanations and details were given in a clear and straightforward manner. I find the extra \$20 paid every two months by the tenant is not an increase in rent; I find the weight of the evidence is that he voluntarily contributed this amount to the hydro bill every two months because the landlord gave him permission to have an air conditioner which uses considerably more power. I find that while hydro is included in his rent, air conditioning is not so this is an extra service he required and agreed to pay for. I also found his statements inconsistent as he claimed to be paying \$50 extra whereas he wrote on top of the Notice to End Tenancy that it was \$20 extra which agreed with the landlord's account.

I find insufficient evidence to support the tenant's statement that he offered rent that was refused. I dismiss this portion of his claim.

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.

I dismiss the claim of the tenant in its entirety without leave to reapply.

Calculation of Monetary Award:

Rental Arrears May –June 2017	412.50
Over-holding Rent July -August	750.00
Filing fee	100.00
Total Monetary Order to Landlord	1262.50

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: August 10, 2017

Residential Tenancy Branch