



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC FF

Introduction:

Only the landlord attended and gave sworn evidence, although the tenant had also filed an application. The landlord confirmed personal service with a witness of two 10 Day Notices to End Tenancy dated June 21, 2017 to be effective June 30, 2017 and a second on July 4, 2017. He also confirmed personal service of his Application for Dispute Resolution and also the tenant's on him. However, he said the tenant did not serve the Amendment dated July 7, 2017 on him. I find the documents, except the tenant's amendment, 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; and
- c) An order to recover the filing fee pursuant to Section 72.

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

- d) To cancel a Notice to End Tenancy for unpaid rent pursuant to section 46;
- e) A monetary order or rent rebate as compensation for facilities not provided for a period of time and for illegal entry and disturbance of their reasonable enjoyment contrary to sections 27, 28 and 29;

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 a balance of probabilities they are entitled to compensation and for how much?

Background and Evidence:

Only the landlord attended the hearing, although the tenant also made application to be heard today. The tenant had still not attended the hearing by 9:15 a.m. and it proceeded in his absence. The landlord was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced March 1, 2017, that rent is \$950 a month and a security deposit of \$475 was paid by an agency for the tenant. It is undisputed that the tenant has not paid rent for part of June (\$250) and none for July, August or September 2017 but he made an Application on August 10th to request compensation or a rent rebate for problems he had with heat, internet and for the landlord's disturbance of his reasonable enjoyment.

The landlord gave evidence that when the tenancy commenced, the tenant was attending school. After two months, he quit school and was not working. He moved some others into the unit without consent. In late June, there was garbage all over for a long time and it appeared the tenant was not there. However, he returned and the landlord served him on June 21, 2017 with the first Notice to End Tenancy. However, no rent has been paid since early June.

In evidence are two Notices to End Tenancy for unpaid rent, proofs of service 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 there is unpaid rent and the tenant did not dispute the first Notice to End Tenancy in time, within the 5 days permitted by section 46 of the Act, and he did not serve the Amendment to dispute the second Notice on the landlord. In these circumstances section 46 of the Act provides a tenant is conclusively presumed to have accepted the end of the tenancy on the date set out in the Notice. I find the tenancy ended on June 30, 2017 pursuant to the first 10 Day Notice served on the tenant. I find the landlord entitled to an Order of Possession.

Although the tenant made some complaints in his application, I find section 26 of the Act requires a tenant to pay rent when it is due, whether or not the landlord fulfills his obligations under the Act. The tenant provided no evidence that he had paid for emergency repairs or had any legal reason (such as an arbitrator's order) to deduct monies from his rent. He alleged a heat problem since April 2017 had caused mould to grow on his boots, clothes and electronics and he claimed compensation for this. However, I find he provided no evidence and did not attend to support his allegations. I dismiss his application.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that he has received no rent since June 2017 and only a partial payment of \$700 for June. I find the landlord entitled to a monetary order for \$3100 representing unpaid rent of \$250 for June and \$950 for each of July, August and September, 2017. The landlord requests to keep the security deposit in trust.

Conclusion:

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

I find the landlord entitled to an Order of Possession effective two days from service, as requested, and a monetary order as calculated below. I find him entitled to recover filing fees for this application. The tenant's security deposit will remain in trust to be dealt with pursuant to section 38 of the Act after he vacates.

Calculation of Monetary Award:

Rent arrears June 2017	250.00
Over holding rent July, August, Sept. (950x3)	2850.00
Filing fee	100.00
Total Monetary Order to Landlord	3200.00

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: September 12, 2017

Residential Tenancy Branch