



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNDC FF

Introduction:

Both parties made Applications but only the landlord attended the hearing and gave sworn testimony. She said they served the 10 Day Notice to End Tenancy dated September 1, 2017 to be effective September 10, 2017 and their Application for Dispute Resolution personally with a witness. She stated the tenant did not serve her with h's Application for Dispute Resolution or any documents. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. I find the tenant did not serve the landlord as required and his application is dismissed for lack of service. 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.

The tenant applies to cancel the Notice to End Tenancy for unpaid rent and the One Month Notice to End Tenancy for cause.

Issue(s) to be Decided:

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

Or is the tenant entitled to any relief?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced July 1, 2017, that rent is \$625 a month and a security deposit of \$312.50 was paid. On his Application, the tenant said it is lies that he has not paid rent for September 2017 but he provided no proof of payment. The landlord said the tenant has not paid rent for September or October 2017 and has told others he can live rent free for months. The landlord claimed only \$625 in her application but said the tenant owes an

additional \$625 for October 2017. She requests an Order of Possession to be effective as soon as possible.

I find the tenant did not serve his application or attend to support his application. He said on the application that the landlord was lying and as she was the mother of his room mate, he was being unfairly evicted as the room mate wanted that. The landlord agreed that her son was the room mate of this tenant but said he is being evicted for legal reasons.

In evidence is the 10 Day Notice to End Tenancy for unpaid rent, proofs of service, a tenancy agreement, a One Month Notice to End Tenancy for cause 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:

Section 26 of the Act provides a tenant must pay rent on time to the landlord. Section 46 provides that if rent is not paid, a 10 Day Notice to End Tenancy may be served on the tenant and the tenant may pay the rent or dispute that Notice within 5 days. I find the tenant did not pay the outstanding rent and did not serve his application on the landlord. I dismiss the tenant's application. I find the tenancy ended on September 10, 2017. I find the landlord entitled to an Order of Possession to be effective two days from service.

As the landlord has been successful in obtaining an Order of Possession based on the 10 Day Notice to End Tenancy, I find it irrelevant to consider the One Month Notice to End Tenancy for cause.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord satisfied the onus of proving that rent is \$625 a month and the tenant has not paid rent for September or October. As explained to her in the hearing, she is limited to recovery of \$625 in this hearing. According to the Principles of Administrative Justice, a party must have notice of any claim against them and have an opportunity to respond. I find the tenant in this case was only notified of a potential monetary claim for \$625. I find the landlord entitled to a monetary order for \$625 and leave to reapply for unpaid rent or damages.

The landlord chooses to keep the security deposit in trust for the tenant rather than using it to offset the amount owing. I advised her to consult section 38 of the Act regarding the rights and responsibilities of the parties in respect to the security deposit.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find the landlord entitled to an Order of Possession and a monetary order for \$625.00. No filing fee was paid so none is awarded. I give the landlord leave to reapply for further unpaid rent and damages.

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: October 12, 2017

Residential Tenancy Branch