



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This is a cross application. The tenant did not attend the hearing. The landlord attended the hearing and gave sworn testimony. The landlord stated the 10 Day Notice to End Tenancy dated September 8, 2017 to be effective September 25, 2017 was served personally and his Application for Dispute Resolution by registered mail. The confirmed they received the tenant's Application to Dispute the Notice by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To suspend or set limits on the landlord's right to enter the unit pursuant to section 29.

The landlord applied using the new electronic file system which I overlooked in error. When received, I considered his evidence and issue my decision accordingly. The landlord requests:

- d) An order of possession;
- e) A monetary order for rental arrears and overholding rent;
- f) To retain the security deposit to offset the amount owing;
- g) To recover the filing fee.

Issue(s) to be Decided:

Is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession and monetary order?

Background and Evidence

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The evidence is that the tenancy commenced November 30, 2016 and rent is \$2790 a month. The landlord served a Notice to End Tenancy because rent for September 2017 was not paid. The landlord said the tenant did not pay September's rent or any rent since. They said they made a

cross application to claim the unpaid rent to be heard at the same time today as the tenant's file. He forwarded a copy of the electronic file and I considered it in my Decision. The landlord stated that the rent arrears and over holding rent amounted to \$11,480 and requests a monetary order for that amount and to retain the security deposit of \$1395 to offset the amount owing.

In her application, the tenant wrote she hoped to stay until December 1, 2017 and there were plumbing problems. She also stated the landlord or his repair personnel were making unauthorized entry into her suite. The landlord denied this and said she was always given 24 hour Notice of Entry as required by section 29 of the Act. He submitted a plumber's receipt to indicate he had addressed the plumbing issue.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find the weight of the evidence is that there was unpaid rent for September 2017 and the tenant received the 10 Day Notice to End Tenancy on September 15, 2017. I find she disputed the Notice in time on September 19, 2017 which is within the 5 days allowed by section 46 of the Act. However, I find she never paid the rent but complained about plumbing problems and unauthorized entry.

Section 26 of the Act requires a tenant to pay rent on time whether or not the landlord meets his obligations under the Act. However, I find the landlord's evidence credible that they have met their obligations regarding plumbing repair and Notice of Entry requirements. I find the tenant has not paid her rent so her application to cancel the Notice is dismissed. Section 55 of the Act provides that an arbitrator must grant an Order of Possession to the landlord in these circumstances. I find the landlord entitled to an Order of Possession effective two days from service.

On the landlord's application, I find he is entitled to an Order of Possession and a monetary order for 4 months rent. He claims \$11,480 but I find the evidence is that rent is owed from September to December 2017 (4 months at \$2790 = 11,160). I find insufficient evidence to support the extra \$320 claimed. I find him entitled to a monetary order for \$11,160 and give him leave to reapply for further amounts owing and damages.

Conclusion:

I dismiss the application of the tenant in its entirety. I find her not entitled to recover filing fees due to lack of success. I find the landlord entitled to an Order of Possession effective two days from service.

I find the landlord entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find him entitled to recover filing fees for this application. I give him leave to reapply for further over-holding rent and damages.

Rent arrears and over holding rent	11,160.00
Filing fee	100.00
Less security deposit	-1395.00
Total Monetary Order to Landlord	9,865.00

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: December 06, 2017

Residential Tenancy Branch