



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant agreed they received personally both the 10 Day Notice to end Tenancy dated December 12, 2017 to be effective December 22, 2017 and the Application for Dispute Resolution. I find that the tenant was 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;

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

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 September 2017, a security deposit of \$300 was paid and rent is currently \$600 a month. The parties agreed the tenant had paid the outstanding rent but they signed a Mutual Agreement to End Tenancy on December 22, 2017 to end the tenancy on January 15, 2018. The Agreement was in another language but both parties sent in second copies in English and agreed these were the terms. They agreed the tenant has vacated and there is no rent owing.

The landlord said she considered withdrawing her application but there was a fire on January 15, 2018 which caused a lot of damage and she wants to recover money for damages. On January 8, 2018, she filed an Amendment claiming \$4600 for damages she is or will suffer due to the fire. She said the tenant caused the fire and won't provide her with a forwarding address. The tenant filed some information she obtained from the fire department and she disclaims any responsibility for the fire. I advised both parties of the provisions of section 38 of the Act and that the tenant must provide a forwarding address in order to obtain a refund of her deposit. I advised the landlord that to claim damages, she needs some objective proof that the tenant caused the damage and some proof of the costs. I declined to hear a damage claim since these elements were not in evidence. The parties began arguing about the forwarding address and the conference ended.

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

Analysis

I find the weight of the evidence is the tenant vacated by January 15, 2018 and owed no rent. Both parties confirmed this. Therefore, I find the landlord no longer requires an Order of Possession or a monetary order for unpaid rent. This was the subject of her original application.

In respect to the landlord's amendment filed on January 8, 2018, I find insufficient evidence to support her claim. I dismiss her claim but since the fire was recent, I give her leave to reapply when she has obtained the necessary evidence on the cause of the fire and the costs involved.

Conclusion:

I dismiss the application of the landlord and find she is entitled to recover her filing fee as it was necessary on December 18, 2017 to file the application as the Mutual Agreement had not been executed at that time. I give her leave to reapply for damages.

I HEREBY ORDER that the landlord may recover the \$100 filing fee by deducting it from the tenant's security deposit.

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: February 08, 2018

Residential Tenancy Branch