



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR CNR OPR FF

Introduction:

Both parties attended the hearing and gave sworn testimony. Each confirmed receipt by registered mail of the 10 Day Notice to End Tenancy dated December 22, 2017 and of each other's Application for Dispute Resolution. I find the documents 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.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel Notice to End Tenancy for unpaid rent;
- e) To order the landlord to restrict entry into the property pursuant to section 29; and
- f) To recover the filing fee pursuant to section 72.

Issue(s) to be Decided:

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

Or is the tenant entitled to any relief? Is the tenant entitled to an Order pursuant to section 29 of the Act?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 2016, that rent is \$1400 a month inclusive and a security deposit of \$700 was paid. The landlord claimed \$5600 of rent was unpaid in the Notice to End Tenancy.

He said this was based on 4 months rent outstanding, September, October, November and December 2017. The tenant provided evidence of a bank statement showing he paid September rent. In the hearing, the landlord said it was actually May 2017 rent was not paid but he was advised at the Residential Tenancy Branch to just state September to make it sequential. In evidence, the landlord provided a bank statement for January 2018 which showed the tenant paid rent of \$1000 + \$40. The landlord said the tenant actually paid \$1400 for January 2018 and \$1200 for February 2018. The landlord also provided a typed spreadsheet of text messages as proof that rent was owed. The tenant said he never saw these but he said all rent was paid except \$200 for February 2018, although sometimes late.

The tenant said he had received no evidence from the landlord other than the Notice to End Tenancy and a revision to add September rent. He said he fell behind because he was injured and had to receive WCB for a time. He said he has had no opportunity to respond to the allegations of the landlord for he received none of the evidence of unpaid rent.

The tenant is also concerned with unannounced visits by the landlord to the property. He said the son and mother came very early one morning uttering threats and banging on his door because of the rent discrepancy. He had to call the Police and they left. A second time, they came over and unplugged his Christmas lights. The landlord said the wife is nervous of electricity and wires so she unplugged them. The tenant said they were LEDs with correct wiring for outdoors and even if he was not there, they could have asked the tenant in the basement about them. The tenant supplied a statement from the basement tenant about the unauthorized visits.

In evidence is the Notice to End Tenancy for unpaid rent, a one page monetary order worksheet that had no details of rent paid and owing, a spreadsheet of alleged text messages as 'proof of money owed', the tenancy agreement, bank statements from the tenant for September 2017 and January 2018 and a statement from the tenant's basement tenant. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has not satisfied the onus of proving there was unpaid rent before December 22, 2017 when the Notice to End Tenancy was issued. The landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent. I

find text messages, voice messages and a bank statement subsequent to the Notice to End Tenancy are insufficient evidence to satisfy the onus. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that the landlord's records are incorrect.

I note the following inconsistencies; In the previous Direct Request proceeding the landlord did not succeed as the arbitrator found the worksheet provided by the landlord showed a payment of \$4200 after the Notice to End Tenancy was issued. In this hearing, the landlord said that was a mistake. Furthermore, he had put on this application that rent for September 2017 was not paid and the tenant provided evidence that it was paid. The landlord said this was just to make the months sequential although it was May 2017 that was not paid. I find the landlord has not satisfied the onus of proving rent was unpaid and the amount.

Furthermore, I find the landlord did not serve the tenant with his evidence. Rule 3 of the Residential Tenancy Branch Rules of Procedure states evidence must be provided to the Residential Tenancy Branch and served on the other party within time limits that allow them to respond. The principles of Natural Justice also provide that a party must have an opportunity to see the evidence and have an opportunity to respond.

For all of the above reasons, I set aside and cancel the Notice to End Tenancy dated December 22, 2017.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the landlord has been making unauthorized entry to his property and harassing him as alleged. I find the tenant satisfied the onus. The evidence of the witness supports the tenant's statements and the landlord agreed they entered the property without authority and unplugged his Christmas lights. I find whether or not electricity makes the wife of the landlord nervous, the landlord must abide by the provisions of the Act and give proper notice of entry pursuant to section 29 of the Act.

I find section 28 of the Act provides that a landlord must protect the peaceful enjoyment of the tenant also and the landlord has not observed this section also as he or his relatives have been visiting and banging on the tenant's door about rental payments. Section 46 of the Act provides a landlord may serve a 10 Day Notice to End Tenancy for unpaid rent. Section 47 of the Act provides a landlord may serve a One Month Notice for repeated late payment of rent. However, there is no provision to allow the landlord to intrude on the tenant's privacy and peaceful enjoyment to continually demand rent. I find the tenant entitled to orders that the landlord obey sections 28 and 29 of the Act.

Conclusion:

I dismiss the application of the landlord in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

The tenant is successful. I set aside and cancel the Notice to End Tenancy dated December 22, 2017 and I find him entitled to recover his filing fee. The tenancy is continued. **I HEREBY ORDER that the tenant may recover his \$100 filing fee by deducting it from the rent.**

I HEREBY ORDER THE LANDLORD:

- 1. To obey section 28 of the Act and protect the peaceful enjoyment of the tenant.**
- 2. To obey section 29 of the Act and give legal Notice of Entry to the tenant or obtain his consent before entering the property.**

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 15, 2018

Residential Tenancy Branch