



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR CNR OPR MNSD FF

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. The tenant confirmed he personally received a 10 Day Notice for unpaid rent dated January 6, 2018 to be effective January 16, 2018 and the landlord's Application for Dispute Resolution. The landlord confirmed he received personally the tenant's Application for Dispute Resolution which was filed January 12, 2018. 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;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies to cancel the Notice to End Tenancy for unpaid rent;

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a Monetary Order for rental arrears? Or is the tenant entitled to any relief?

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 2015, that rent is \$1500 a month and a security deposit of \$750 was paid. It is undisputed that the tenant has not paid rent from December 2017 to March 2018 so owes \$6,000 (4 x \$1500). The tenant said in his Application that he had to quit his job to look after his four children when his wife left as no child care was available.

The tenant said he understood that the landlord had sufficient cause to end his tenancy. The parties discussed the tenant's shift work and they agreed that an effective date for an Order of Possession could be April 7, 2018 to accommodate the tenant.

In evidence is the Notice to End Tenancy for unpaid rent, the lease, bank statements showing the history of rent payments and emails and texts regarding the unpaid rent.

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

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the weight of the evidence supports the landlord's claim that rent is outstanding in the amount of \$6000. The tenant did not dispute that he owes this amount. He pleads unfortunate circumstances caused this. I find the tenancy ended on January 16, 2018 pursuant to the Notice to End Tenancy as that amount was not paid. I find the landlord entitled to an Order of Possession effective April 7, 2018 as agreed by the parties and to a monetary order for \$6,000 for rental arrears and over-holding rent.

With respect to the tenant's application, I find section 26 of the Act requires a tenant to pay rent on time and section 46 provides that a landlord may serve a 10 Day Notice to End Tenancy if rent is unpaid. Although the tenant's circumstances are unfortunate, I find the Act does not provide that a Notice to End Tenancy for unpaid rent may be set aside due to unfortunate circumstances. I dismiss the tenant's application.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. His filing fee was waived.

I find the landlord entitled to an Order of Possession effective April 7, 2018 as agreed and to a monetary order as calculated below. I find he is entitled to recover filing fees for his application and to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Rent arrears: Dec. 2017 & Jan 2018	3000.00
Over-holding rent: Feb. & March 2018	3000.00
Filing fee	100.00
Less security deposit	-750.00
Total Monetary Order to Landlord	5350.00

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: March 13, 2018

Residential Tenancy Branch