



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR MT MNR MNSD FF

Introduction:

Both parties had made applications. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. on June 14, 2018. The landlord attended the hearing and gave sworn testimony and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated March 26, 2018 to be effective April 9, 2018 personally on March 26, 2018. They received the tenant's Application for Dispute dated April 13, 2018 personally also and served her with their Application dated April 20, 2018. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act):

- a) to cancel the Notice to End Tenancy;
- b) To grant more time to file the application pursuant to section 66 as they relied on a verbal agreement with them regarding payment of rent; and
- c) To order the landlord to comply with the Act.

The landlord applies:

- d) To obtain an Order of Possession pursuant to sections 46 and 55;
- e) To obtain a monetary order for unpaid rent;
- f) To retain the security deposit to offset the amount owing; and
- g) To recover the filing fee for their application.

Issues: Is the landlord entitled to a monetary order for unpaid rent and to an Order of Possession or is the tenant entitled to any relief?

Background and Evidence:

Although both parties made applications, only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. They provided facts as follows:

- 1) The tenancy commenced October 1, 2017, rent is \$1850 a month and a security deposit of \$925 was paid.
- 2) The tenant failed to pay rent and a Notice to End Tenancy was served in March for \$2600 in rent arrears.
- 3) The tenant did not dispute this Notice until after the effective date of the Notice.
- 4) Subsequently, the tenant paid \$1300 of the outstanding rent but did not pay rent for April, May or June 2018. She now owes \$6850 calculated as follows: \$2600-\$1300 + (1850x3).
- 5) The tenant appears to have abandoned the unit. They found the door was open for 5 days with no one there and some indications that vagrants were entering.

In her application, the tenant said she had been waiting for a tax refund and relied on a verbal agreement with the landlord that she could pay arrears on April 1, 2018. That is why she was late in filing her application. She also said the landlord had not informed her that a secondary suite in the home was decommissioned so she was unable to rent it to assist with rent.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. I find insufficient evidence to support the tenant's submissions that she had a verbal agreement with the landlord regarding arrears and even if she had, I find the weight of the evidence is that she did not pay her arrears by April 1, 2018. Furthermore, I find she was out of time to dispute the 10 Day Notice. From service of the Notice, I find pursuant to section 46 of the Act, she had 5 days to either pay the rent or file her Application and she did neither. For these reasons, I dismiss her application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective two days from service.

I find the landlord's application well supported by the oral and documentary evidence. I find the landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and

67 of the Act. I find them entitled to retain the security deposit to offset the amount owing and to recover their filing fee.

Conclusion:

I dismiss the tenant's application; her filing fee was waived. I grant the landlord an Order for Possession effective two days from service and a monetary order as calculated below. I find the landlord entitled to retain the security deposit to offset the amount owing and to recover the filing fee.

Rent arrears to March 2018	2600.00
Over holding rent from April to June 2018	5550.00
Less payment	-1300.00
Filing fee	100.00
Less security deposit	-925.00
Total Monetary Order to Landlord	6025.00

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: June 14, 2018

Residential Tenancy Branch