



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR AAT LRE RP

Introduction:

Both parties, counsel for the landlord and witnesses attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 4, 2018 to be effective April 18, 2018 by posting it on the door. The tenant said they served the landlord with their Application for Dispute dated April 17, 2018 by registered mail on April 17, 2018. The tenant said he did not receive the landlord's evidence. The property manager testified that she tried to serve it on June 4, 2018 but the tenant said he was going out; when she went down again at 7:12 p.m., there were 8 police officers at the door and the whole floor was evacuated. On April 5, 2018, the manager called the hospital which said the tenant was there but could not be seen. She asked to speak to a social worker who took the documents and promised to give them to the tenant that day. She confirmed later that she had hand delivered them to the tenant. I find the tenant was sufficiently served with the evidence pursuant to section 71(2)(c) for the purposes of this hearing. The tenant applies pursuant to *The Residential Tenancy Act* (the Act)

- a) to cancel the Notice to End Tenancy pursuant to section 46;
- b) to set restrictions on the landlord's entry into the suite pursuant to section 29;
- c) to allow access to the tenant and the tenant's guests pursuant to section 30;
- d) to order the landlord to comply with section 31 of the Act and restore the tenant's fob entry; and
- d) to order the landlord to repair pursuant to sections 32 and 33.

Issues: Is the tenant entitled to any relief?

Preliminary Issues:

Adjournment: The tenant requested an adjournment because he has ongoing health issues, he has a mental disability and had problems obtaining an advocate and he received no evidence from the landlord.

Rule 6 of the Residential Tenancy Branch Rules of Procedure provide rules on rescheduling and adjournments. Rule 6.1 states the Branch will reschedule if written consent is received from both parties at least 3 days before the scheduled date for the hearing. I find insufficient evidence that the tenant tried to obtain consent from the landlord to reschedule the hearing.

Rule 6.3 provides an arbitrator may adjourn the proceeding after the hearing commences. The criteria for granting an adjournment are set out in Rule 6.4. In applying the criteria, I find there would be considerable prejudice to the landlord in adjourning the hearing as the tenant has paid no rent for the past three months. I also find an adjournment is unlikely to contribute to a resolution of the matter and is unnecessary to allow a fair opportunity for each party to be heard. I found the tenant communicated well in the conference and explained his points well. The parties were given the opportunity to make submissions and raise issues in the hearing and I find had a fair hearing. I declined to grant an adjournment and the hearing proceeded.

Amendment to Landlord's Name:

The tenant had named the property manager as one of the landlords. The landlord requested the landlord's name be amended to the professional name of the landlord which is in the tenancy agreement and on the Notice to End Tenancy. The amendment was granted.

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The evidence is that the tenancy began March 2017, rent is \$1164 a month and a security deposit of \$560 was paid. The property manager testified that the tenant failed to pay the rent for April and was served with a Notice to End the Tenancy on April 4, 2018 and that the rent is still outstanding. He currently owes \$3567 including 3 late fees of \$25 each. The tenant paid no rent for May and June 2018. The landlord requested an Order for Possession effective two days from service if the tenant is unsuccessful in this application.

The tenant testified he did not pay the rent because there is black mould and the landlord had not done repairs. This has affected his peaceful enjoyment; the landlord has also illegally entered his unit on a number of occasions, and deactivated his fob on April 12, 2018 which illegally locked him out. He said he had not paid for any emergency repairs but withheld his rent. He said his bank account was suspended while he was in hospital so the automatic payments for rent were refused. In the hearing, he said his account was frozen due to fraud.

The landlord denies illegally entering his suite. On April 5, 2018, a tenant above this tenant's unit reported a water leak so the manager made an emergency entry on April 5, 2018 to see if there was any water originating from the unit above. She texted the tenant about the situation; the tenant could receive, read and write messages from his mobile phone while in hospital. This was the only entry into the tenant's suite and none on April 6, 7 or 10th as the tenant alleges.

Regarding the deactivated Fob, the manager states that the tenant informed her by text that someone entered his unit; they deactivated the Fob for security reasons. The tenant could still enter by phone and the Fob was reactivated on April 17, 2018. The tenant complained it was still not working so a new Fob was issued.

In respect to the complaint of mould, the manager said she and a repair person went to the unit on April 30, 2018 and found the mould problem was a build up of mould due to lack of cleaning. The landlord pleads that the main issue here is non payment of rent and the other issues raised by the tenant are not relevant to the main issue.

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 the tenant paid for no emergency or other repairs so the Act does not permit him to make deductions from his rent. I find also section 46 of the Act requires him to pay the rent within 5 days of receipt of the Notice or file an Application to Dispute it. I find he did neither and filed his Application late. Section 26 of the Act requires a tenant to pay rent on time whether or not a landlord fulfills their obligations under the Act. I find none of the tenant's complaints constitute valid reasons to withhold his rent. For the above reasons, I therefore dismiss his 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 find the tenancy ended on April 18, 2018. I grant the landlord an Order for Possession effective two days from service.

Section 55(4) provides that in these circumstances, the landlord may be granted a monetary order for the unpaid rent. I find the landlord entitled to a monetary order for \$3567 for unpaid rent and late fees for April, May and June 2018.

I dismiss the remainder of the claims of the tenant. Although they are not relevant to the main issue of non payment of rent, I find as follows. I find insufficient evidence to support his claims. The landlord denies illegal entry and provided a detailed account of the one emergency entry which I find they are entitled to make pursuant to section 29(f) of the Act as it involved water leaking and was necessary to protect property. I find the weight of the evidence is that his Fob was deactivated for a short time for safety reasons due to the tenant reporting someone entered his unit while he was in hospital but it was reactivated and then replaced when he found it was not working. I find he was not locked out of the building as there was a means of entry using his phone. In respect to the claim of mould, I find his photograph shows some dark spots in the grout of the bathtub which may be caused by lack of cleaning as the landlord states.

Conclusion:

I dismiss the tenant's application; the filing fee was waived. I grant the landlord an Order for Possession effective two days from service.

Pursuant to sections 55(4) and 46 of the Act, I grant the landlord a monetary order for the unpaid rent as calculated below. The landlord requests the security deposit be deducted to offset the amount owing.

Rent arrears & Over holding rent April to June 2018 (3x\$1164)	3492.00
Late fees 3x \$25	75.00
Less security deposit	-560.00
Total Monetary Order to Landlord	3007.00

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