



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION AND ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR CNR FF

Introduction:

Both parties made applications and attended the hearing and gave sworn or affirmed testimony. The tenant confirmed she received a 10 Day Notice for unpaid rent dated May 10, 2018 to be effective May 20, 2018 posted on her door. She filed an Application to Dispute the Notice on May 18, 2018 and the landlord confirmed it was served personally. The landlord also served an Application on the tenant by registered mail. The tenant said it was posted on her door. The manager provided evidence of the service by registered mail on June 4, 2018 and the postal service showed they left several notices but when it was unclaimed by the tenant by June 25, 2018, they returned it to the landlord. The resident manager said she then put it on the tenant's door so she would have notice of their application. 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.

The tenant applies to cancel a Notice to End Tenancy for unpaid rent and for an order to repair and protect her peaceful enjoyment.

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?

Has the tenant proved on a balance of probabilities that the landlord has failed to repair and/or to protect her peaceful enjoyment?

Background and Evidence:

Both parties and a witness attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced January 15, 2018, that rent is \$1500 a month inclusive and a security deposit of \$750 was paid. It is undisputed that the tenant has not paid rent for April or July 2018 but she made two applications, one to cancel the Notice to End Tenancy dated May 10, 2018 and one to cancel the Notice dated in July 2018. Her second application is due to be heard on August 30, 2018.

The tenant agreed she had not paid rent for April 2018 as there seemed to be a bank problem. The landlord said they did not get notification of this until April 20, 2018 so their Notice to End Tenancy was not issued until May 10, 2018. The rent for April was never paid and the tenant also owes rent for July

2018 for which she was issued a second 10 Day Notice to End Tenancy. In evidence is the Notice to End Tenancy for unpaid rent.

The tenant recounted many problems she has had with the tenancy including non working electrical outlets, her need for a mailbox and new locks and the dogs in the building which threaten her and block access to her unit. She said tenants down the hall from her have two dogs that have caused the most problems. She believed this was a dog free building as she has allergies and medical problems. She complains that some tenants are targeting her by putting garbage on her patio and by doing other things. She said the owner of the building is known for his compassion and help in the community and he should be aware of what is happening.

The manager said she has been there for 18 years and half of the people in the building have dogs. They are allowed and no one else has complained. They have no proof of any dog threatening the tenant. Regarding the repair complaints, the manager said this was a brand new unit when the tenant moved in and she has been at the tenant's unit with 4 maintenance men and they found nothing wrong. She stated it is untrue that the tenant is being targeted. She said the tenant puts numerous letters in the lobby, posts them on her door and telephones her. She finds it harassing but the tenancy is being ended for unpaid rent, not for cause.

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

Analysis:

Order of Possession:

Section 26 of the Act requires a tenant to pay rent on time, whether or not the landlord is meeting their obligations under the Act. Section 46 provides a landlord may serve a 10 Day Notice to End Tenancy if the rent is unpaid. I find rent of \$1500 owed for April 2018 was never paid and a further amount for \$1500 for July 2018 has not been paid.

I dismiss the tenant's application to cancel the 10 Day Notice and I uphold the Notice.

In these circumstances, section 55 of the Act provides the landlord is entitled to an Order of Possession and pursuant to section 55(4) a monetary order for the unpaid rent.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is there is outstanding rent of \$3000. I find the landlord entitled to a monetary order for the unpaid rent.

On the tenant's application, the onus is on her to prove on the balance of probabilities the landlord is failing to protect her reasonable enjoyment contrary to section 28 of the Act as dogs are in the building contrary to the lease agreement and are threatening her and that necessary repairs have not been done. I find insufficient evidence to support her complaints. I find the evidence of the manager credible that dogs are permitted in the building and it is advertised and in the lease agreements. Her credibility is supported by the list of dogs in the units and her testimony that no complaints were lodged in her 18 years of management there. I find insufficient evidence to support her allegation that the landlord is failing to protect her peaceful enjoyment. I also find the manager's evidence credible that necessary repairs are done as this is supported by her visits with 4 maintenance personnel who found nothing wrong. I dismiss this claim of the tenant.

The parties discussed an effective date for the Order of Possession and the landlord agreed to July 23, 2018. The tenant requested it be put in an envelope if posted on her door to protect her privacy.

Conclusion:

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

I find the landlord entitled to an Order of Possession effective July 23, 2018 and to a monetary order as calculated below. I find them entitled to recover the filing fee.

Calculation of Monetary Award:

Unpaid rent April and July 2018 (2x 1500)	3000.00
Filing fee	100.00
Total Monetary Order to Landlord	3100.00

I HEREBY ORDER that any Notices posted on the tenant's door be placed in an envelope to protect her privacy.

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: July 12, 2018

Residential Tenancy Branch