



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. on October 11, 2018. The landlord attended the hearing 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/tenant and I were the only ones who had called into this teleconference.

The landlord said he served the 10 Day Notice to End Tenancy dated August 10, 2018 to be effective August 20, 2018 by posting it on the tenant's door and served the Application for Dispute Resolution by registered mail. 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 and over- holding 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 disputes the 10 Day Notice to End Tenancy dated August 10, 2018 as she said she paid by e transfer which was not received and when the landlord wanted cash, she told them she was out from the 10th to the 13th. She requests recovery of the filing fee also.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application? Or is the tenant entitled to any relief?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. He explained he no longer needed an Order of Possession as he had obtained this in a previous hearing and the tenant had vacated on October 5, 2018 after giving one day Notice. The unit has not been re-rented yet. The evidence is that the tenancy commenced on February 1, 2018, rent was \$1200 a month and a security deposit of \$600 was paid. The landlord provided evidence that the tenant had not paid rent for August, September and October 2018. He received a monetary order for September's rent together with an Order of Possession related to the 10 Day Notice to End Tenancy issued in September 2018.

In this hearing, he requests a monetary order for unpaid rent for August 2018 and over holding rent for October 2018. The tenant vacated on October 5, 2018 with a one day Notice and the unit has not been re-rented yet. In evidence are two Notices to End Tenancy for unpaid rent, proofs of service, registered mail tracking information and much evidence on fraudulent information on interact transfers. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

In respect to the tenant's application, I find the matter of the e mail transfer and Order of Possession was already decided in respect to the 10 Day Notice to End Tenancy issued in September 2018.

Analysis:

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenant owes rent for August and October, 2018. Rent is due on the 1st of the month and by over holding and not paying rent for October, I find the tenant prevented the landlord from re-renting for October and caused him rental loss. I find the landlord entitled to \$2400 in unpaid rent. I find the landlord may retain the security deposit of \$600 to offset the amount owing.

On the tenant's application, I find the matter of the e mail transfer and Order of Possession was already decided in respect to the 10 Day Notice to End Tenancy issued in September 2018. I find the evidence on file indicates the email transfer was not sufficient evidence of payment of rent as it was undated officially and had other problems so the landlord was issued the Orders in the previous hearing. Therefore, I find the matter is res judicata in respect to the Order of Possession and rent for September 2018. In respect to the rent for August 2018, I find insufficient evidence to support the tenant's contention that she paid the rent by e transfer. I find the copy of

the e transfer that she included in evidence may be a photo of a demonstration as there is no official date and time and has other problems. I find the emails in evidence do not support her contention that she was not available at the scheduled time to pay cash. Also, she did not attend the hearing to support her application. I find the landlord's evidence credible that he never received any such transfer. I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion:

I find the landlord entitled to a monetary order as calculated below. The calculation includes an award of the filing fee and retention of the security deposit to offset the amount owing. I dismiss the tenant's application in its entirety without leave to reapply and find her not entitled to recover the filing fee due to lack of success.

Calculation of Monetary Award:

Unpaid and over-holding rent	2400.00
Filing fee	100.00
Less security deposit	-600.00
Total Monetary Order	1900.00

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: October 11, 2018

Residential Tenancy Branch