



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD LRE OLC FF

Introduction:

Both parties filed Applications and both attended the hearing and gave sworn testimony. The female tenant did not attend and the male tenant who attended said his knowledge of the events was somewhat limited as they are now separated. The tenant confirmed they personally received a 10 Day Notice for unpaid rent dated March 2, 2019 to be effective March 31, 2019. They filed an Application to Dispute the Notice on March 4, 2019 and served it registered mail. The landlord also served an Application on the tenant by registered mail. The parties acknowledged receipt of the documents as stated. 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

- (a) to cancel a Notice to End Tenancy for unpaid rent pursuant to section 46,
- (b) to set limits on the landlord's entry into the rental unit; and
- (c) to order the landlord to comply with the Act.

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 September 1, 2018 on a fixed term lease to August 31, 2018, that rent is \$2100 a month

and a security deposit and pet damage deposit, each in the amount of \$1050 were paid on September 1, 2018.

The parties had significant and heated disagreement on whether the rent was paid for March and April 2019. Rent was paid by e transfer and on March 1, 2019, the e transfer was not successful. The bank confirmed they were having some difficulty with e transfers but the landlords received an email from interact saying the female tenant had blocked the e transfer. Then on March 4, 2019, the bank sent an email to them stating that the female tenant had cancelled the e transfer. On March 27, 2019, the female tenant emailed the landlords that cheques for March and April rent were in the mail. The landlords said two registered letters arrived but they did not contain any cheques. The male tenant who attended the hearing said he wrote the cheques to the name of the female landlord. The landlords provided in evidence copies of their bank statements showing they received no rent payments for March and April 2019.

The female landlord explained that she had accepted a job out of town so they had rented their home to these tenants and rented a home for themselves in the other town. She said they had straitened financial circumstances and there was no way they would not have cashed these cheques if they had received them. She understands the law and said she would have accepted the cheques for "use and occupancy only" if they had received them so their Notice to End Tenancy would have still been effective. She pointed out that the female tenant wanted to have permission to have cats and have an energy conservation study done on the house and was upset at their refusal. She said the female tenant asked to have the male tenant removed from the lease as they had separated and he was no longer living there with his dog but when they asked the male tenant, he said he wanted to stay on the lease and not agree to mutually end the tenancy. The male tenant said in the hearing that he wished to remain on the lease to protect the female tenant. He said she was looking for a place and had one secured for June 1, 2019.

The tenant said the landlords were upset when he told them he had moved out and they were pounding on the door on March 1, 2019 just several hours after the rent was due. The female tenant was upset and called him. He said they were standing in the park and staring at the house when he arrived and they called the Police. He said rent had never been late before and the female tenant had a homestay student living there with the landlord's consent. The homestay student was in tears. He talked to the landlords in the park and they wanted the female tenant out of the house. He said they sent a stranger a few hours later to harass the tenant. The landlord said they were not harassing the tenant but exercising their legal right to serve a 10 day Notice to End

Tenancy for unpaid rent. The male tenant said he had forgotten to sign the first one so a male lawyer friend came with him to serve another one that he had signed. That was the stranger mentioned and there was no harassment. When they served the Notice, they explained to the tenant that they were protecting their legal rights and she still had time to pay March rent. She was very upset about the denial for cats. They said their children played in the park across the street for a short time for that was their home park before they moved. There was no intent to intimidate the tenant.

The landlords pointed out that there was no receipt showing they had accepted an e transfer, just the emails showing it was cancelled. Also, there is no evidence that these alleged cheques were cashed. They ask for an Order of Possession as soon as possible and a Monetary Order for the unpaid rent less the security deposit. They said they cannot grant the tenant any more time because of their financial circumstances.

In evidence is the Notice to End Tenancy for unpaid rent, many emails between the parties and from interac and the bank plus other documents concerning their disputes.

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 provides that a tenant must pay their rent on time, whether or not the landlord fulfills their obligations. Section 46 of the Act provides that a landlord may serve a Notice to End Tenancy when rent is not paid when due and a tenant has five days to either dispute the Notice or pay the rent. Although I find the tenant disputed the Notice in time, I find the weight of the evidence is that they have not paid rent for March or April 2019. I dismiss the tenants' application to cancel the Notice to End Tenancy. In these circumstances, I find the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The landlord is issued an Order of Possession effective two days from service.

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 for unpaid rent for March and April 2019 in the amount of \$4200 (\$2100 x 2).

I find insufficient evidence to support the tenant's application to limit the landlord's entry into the home or of any noncompliance to the Act. However, I note section 29 of the Act

restricts the landlord's access and requires notice of entry with date, time and purpose be given to the tenant. I order that the landlord comply with the Act.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application.

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order as calculated below. I find them entitled to recover filing fees for this application and to retain the security and pet damage deposits to offset the amount owing. I give them leave to reapply for any further unpaid rent or damages.

Calculation of Monetary Award:

Unpaid rent March & April 2019	4200.00
Filing fee	100.00
Less security and pet damage deposits	-2100.00
Total Monetary Order to Landlord	2200.00

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: April 16, 2019

Residential Tenancy Branch