



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC FF

Introduction:

This hearing dealt with an application by the landlord 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
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) A monetary order or rent rebate as compensation for facilities not provided contrary to section 27 and for lack of repair to the property contrary to section 32; and
- f) To recover the filing fee for this application.

SERVICE

The tenant did not attend. The landlord provided sworn testimony and affidavits attesting to personal service of the Notice to End Tenancy dated May 23, 2014 and of their Application for Dispute Resolution. The tenant did not attend but the landlord confirmed receipt of the tenant's Application. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are 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 relief? Has the tenant demonstrated that they are entitled to compensation for lack of heat and for uncompleted repairs and to recover filing fees for the application?

Background and Evidence:

The tenant did not attend. The landlord was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on December 15, 2013 and that rent was \$1100 a month. It is undisputed that the tenant owes rent of \$4600 calculated as follows: \$2200 for January and February 2014, \$2400 for March, April and May 2014 –rent was reduced to \$800 in each of those months-, and \$2200 for June and July 2014; from this total of \$6800 is deducted payments of \$600 in January, \$300 in January, \$500 in February and \$800 in April 2014 (total deductions of \$2200). The landlord said the tenant did odd jobs for him on an adjoining property so the rent from March to May was reduced \$300 in each month to compensate him.

The landlord requests an Order of Possession as soon as possible and a monetary order for rental arrears/loss in the amount of \$4600. The landlord does not request to use the security deposit to offset the amount owing so this will remain in trust for the tenant to be dealt with after they vacate according to section 38 of the Act.

In their Application, the tenant alleges that they had no heat for a number of months and the bathtub drain was broken. They provided no evidence such as complaints to the landlord or requests for repair and they did not attend to support their Application. The landlord gave sworn testimony which was confirmed by his lawyer that the rent was originally reduced \$100 a month (from \$1200 to \$1100) to compensate the tenant for possible extra hydro costs when the landlord supplied electric heaters to them when they complained about the furnace. The landlord also testified that the bathtub drain problem was fixed by a plumber.

In evidence is the Notice to End Tenancy for unpaid rent and Affidavits of service.

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

Analysis:

Order of Possession:

Although the tenants made an Application to set aside the Notice to End Tenancy, to make emergency repairs and to compensate them for extra hydro used because of a lack of a furnace, I find insufficient evidence to support their Application. I find that section 26 of the Act provides that a tenant must pay rent when due whether or not the landlord has fulfilled his obligations. The tenants have not paid the outstanding rent. I find the landlord entitled to an Order of Possession to be 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 landlord was able to give consistent, detailed records of amounts owing and amounts paid. I find his evidence credible that the tenant owes \$4600 in rental arrears/loss and I find the landlord entitled to a monetary order for this amount.

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 for \$4650 (including the filing fee). As the landlord did not request to apply a security deposit to offset the amount owing, if there is a security deposit, it will remain in trust to be dealt with in accordance with section 38 of the Act after the tenant vacates.

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 15, 2014

Residential Tenancy Branch

