



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

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

- a) An Order of Possession pursuant to sections 49 and 55; and
- b) 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:

- c) To cancel two Notices to End Tenancy, one dated July 2, 2014 for unpaid rent and the other dated April 29, 2014 for landlord's use of the property;
- d) A monetary order or rent rebate as compensation for repairs to the property or facilities not provided; and
- e) To suspend or set limits on the landlord's right to enter the rental unit.
- f)

Preliminary Issues and Service of Documents:

The ten day Notice to End Tenancy is dated July 2, 2014. The two month Notice was served on April 29, 2014. The tenant filed the application to cancel the two month Notice on June 12, 2014 and amended it on July 4, 2014 to include both Notices. I find the tenant is within the time limitation to apply to cancel the 10 day Notice but out of time to apply to cancel the two month Notice as she is almost a month late. Both parties attended the hearing and each confirmed receipt of the Notices to End Tenancy and of each other's Application for Dispute Resolution. However, the landlord's Application was served by posting it on the tenant's door. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purpose of obtaining an Order of Possession but the landlord's Application was not served according to section 89 for the purpose of obtaining a monetary order for unpaid rent. She must serve such an Application by registered mail or personally. Furthermore, the landlord had crossed out an application for a monetary order for unpaid rent on her application and I find she cannot amend the application at this date as the tenant has had no notice of the amounts claimed against her and has not been served legally for this kind of order.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that 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 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 in March 2014, that rent is \$800 a month plus a disputed \$50 extra for hydro and a security deposit of \$400 was paid in March 2014. It is undisputed that the tenant has not paid rent for June or July 2014 and she states she vacated on July 22, 2014 for she was frightened. She said she has lost money through this and had the Police involved but she submitted no monetary claim on her Application.

The landlord said they require the tenant's unit for their son who married and needs extra living quarters. He had previously lived with them but he needs more room and privacy. The tenant did not dispute this.

In evidence are the Notices to End Tenancy.

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

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that they require the suite for the use of their son who just married. The tenant did not dispute this claim of the landlord. I find the landlord entitled to an Order of Possession.

Although the landlord claimed arrears of rent, she had not indicated this and amounts owed on her application and she had not served the Application according to section 89 by registered mail or personally which service is required to obtain a monetary order. Therefore, I find the landlord not entitled to a monetary order. I give her leave to reapply for amounts owing.

The tenant was upset and said she had lost money over this move and felt she was forced out. As the tenant has vacated the property, I find it moot to consider her request

for an order to suspend the landlord's right to enter the rental unit or for an order to allow her to change her locks. She had claimed no monetary amount from the landlord to compensate her for loss of her peaceful enjoyment contrary to section 28 of the Act. Furthermore, I find she has provided insufficient evidence to support her allegations that her rights under section 28 were infringed by the landlord or obtain a monetary order as compensation. I give her leave to reapply.

Conclusion:

I find the landlord is entitled to an Order of Possession and to recover her filing fee for the application. I dismiss her claim for a monetary order for rental arrears but I give her leave to reapply.

I HEREBY ORDER that the landlord may deduct \$50 from the tenant's security deposit to recover the filing fee which will leave \$350 in trust for the tenant to be dealt with according to section 38 of the Act.

I dismiss the application of the tenant in its entirety but give her leave to reapply for compensation for loss of peaceful enjoyment or other matters related to this tenancy.

Note that applications must be within the legislated time limits in the Act.

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: August 05, 2014

Residential Tenancy Branch

