



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **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) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and/or 47 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.

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

- e) To cancel a Notice to End Tenancy for unpaid rent and a Notice to End Tenancy for cause; and
- f) To recover the filing fee for this application.

### SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated September 25, 2014 for cause and September 26, 2014 for unpaid rent and of each other's Application for Dispute Resolution. 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 they are entitled to an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent or in the alternative for cause pursuant to section 47. Are they entitled to a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to any relief and to recover filing fees for the application?

### **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 present tenancy commenced in September 2013, that rent is \$575 a month and a security deposit of \$260 was paid. It is undisputed that the tenant has not paid rent of \$671 and he filed an Application for Dispute Resolution on September 2014 and amended it on October 1, 2014. The landlord and tenant agree that the tenant tried to pay \$575 rent for September but the landlord would only take \$479 as they had issued the Notice to End Tenancy for cause and wanted him to leave. He owes the balance of \$96 for September and \$575 for October 2014 and tried to pay it; however, the landlord tried to give him a receipt 'for use and occupancy only' which he refused to accept because he thought it would negate his right to dispute the Notice to End Tenancy for cause. The tenant provided evidence on DVD of his efforts to pay this rent and obtain a 'regular' receipt. The landlord said he did not require a monetary order for the \$671 owed to him for he trusted the tenant to pay it today.

In respect to the Notice to End Tenancy for cause, the landlord alleges the tenant has breached a material term of the tenancy by smoking inside his unit contrary to the lease terms. The landlord also states the tenant is engaging in an illegal activity by smoking medical marijuana and he also has a boyfriend living with him when he is the sole occupant on the lease. The tenant said that he has never been issued a written warning to stop smoking in his unit and he assumed it was fine as other tenants were doing it too. However, he agreed that he had been given a verbal warning in August 2014 and had stopped smoking inside his suite; he said he was not aware of a problem with his medical marijuana until he received the landlord's application with the accusations but he said he will not do this anymore inside his suite. In respect to his boyfriend, he denies that his boyfriend is a permanent occupant but maintains he is a frequent guest who sometimes stays overnight. As evidence, the tenant included DVDs showing his boyfriend at his own apartment with a letter addressed to him there; he also filed some letters from other tenants saying he was a good tenant who often took care of the common area. The landlord included some letters also stating that the tenant smoked and that the boyfriend was a permanent occupant.

In evidence are Notices to End Tenancy for unpaid rent and for cause, statements of the parties, photographs, DVDs, the tenancy agreement and letters supporting both the landlord's and tenant's evidence.

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

### **Analysis**

Order of Possession:

The onus is on the landlord to prove on a balance of probabilities that the tenant owes rent which he has refused to pay and/or that they have good cause to end the tenancy. I find the weight of the evidence is that the tenant was willing and able to pay the rent but the landlord did not take it because the tenant mistakenly refused the receipt 'for use and occupancy only'. The tenant's advocate has since explained to him the legality of such a receipt and he is prepared to pay the rent today and take whatever receipt is issued. I find the landlord is not entitled to end the tenancy based on the 10 day Notice to End Tenancy since the rent was offered to him within the five days permitted by section 46 of the Act to cancel the Notice. I hereby set aside the Notice to End Tenancy for unpaid rent dated September 26, 2014.

In respect to the Notice to End Tenancy for cause, the onus of proof on a balance of probabilities is on the landlord to prove that they have good cause pursuant to section 47 to end the tenancy. Section 47(1)(h) states one cause is that if a tenant is in breach of a material term of the lease and has not corrected it within a reasonable time after the landlord gives written notice to do so. I find the undisputed evidence is that the landlord never gave the tenant written notice to correct the alleged material breach of smoking or smoking marijuana in his unit so I find this is not good cause to end the tenancy.

I find the weight of the evidence is that the boyfriend 'W' is not a permanent occupant but a frequent guest of the tenant as evidenced by the DVD provided. In any case, section 30 of the Act provides that a landlord may not unreasonably restrict entry to a guest of the tenant. I find insufficient evidence that this guest is unreasonably interfering with or disturbing other occupants and having two people in his room is not an unreasonable number. Therefore, I find the landlord has not good cause pursuant to section 47 to end this tenancy. While the landlord provided some letters from tenants alleging that the tenant's smoking bothered them, I find the tenant had an equal number of tenants stating he was a good tenant.

The female landlord became quite agitated at the end of the hearing and said they wanted the tenant gone for they did not like him. She was cautioned that this was not a good cause to end a tenancy and the tenant was entitled to a fair hearing to determine if there was good cause. The male landlord then wanted to discuss how the tenant frightens some people but I declined to hear this for no other evidence had been presented of this and the tenant had had no opportunity to answer such allegations.

I caution the landlords to become more familiar with the Act, Regulations and Policy Guideline, all of which are available on the internet, and abide by the law regarding landlords and tenants. I noted in the tenancy agreement that they state they will charge

\$250 for an NSF cheque. Regulation #7 limits such charges to \$25 if it is in the lease. I also note that the landlord is using incorrect dates on their Notices to End Tenancy. A Notice to End Tenancy for unpaid rent must have a minimum effective date of 10 days after service and a Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is due.

**Conclusion:**

I dismiss the application of the landlord in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application. The Notices to End Tenancy dated in September and October are set aside and cancelled. The tenancy is reinstated.

I find the tenant entitled to recover filing fees of \$50 for his application. This may be recovered by deducting \$50 from his next rental payment after he receives this Decision.

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 23, 2014

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Residential Tenancy Branch

