



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR CNR 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 55; 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; and
- e) A monetary order or rent rebate as compensation for lack of repair to the property

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated December 10, 2014 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 rent is owed, the amount, 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 proved on the balance of probabilities that the landlord through act or neglect failed to have necessary repairs completed pursuant to sections 32 and 33 of the Act and they are entitled to compensation for this devaluing the tenancy?

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 1, 2010, that rent is \$700 a month inclusive and a security deposit of \$300 was paid. The landlord claims \$2100 in rent is owed; the tenant disputes this and claims she owes only \$1400. The tenant made Application on December 12, 2014 to cancel the Notice to End Tenancy for unpaid rent and for consideration for repairs not done and her family situation which makes it difficult to move.

The landlord based the amount owed on some handwritten calculations done by a partner of the tenant on March 7, 2014 to which more scrawled numbers were added. On the page, the partner had agreed to pay \$200 in interest and that \$700 was owed for April 1, 2014. In July, it shows \$700 is owed plus \$300 owed from May plus \$200 interest. I find it impossible to follow the rest of the additions or subtractions for the following months. On the next page, the partner agrees that \$2100 was owed as of December 5, 2014 and in the hearing, the landlord said the tenant paid \$700 of this but still owes \$1400 plus January 2015 rent. The tenant disagreed with the calculations and said she only owed \$1400 including rent for January. She had no receipts and said her partner had interacted with the landlord for she has some medical issues.

The tenant claims she should be allowed more time to vacate as she is a single mother with a young family. She provided a list of damages and photographs as evidence of lack of repair of the unit and said she should be allowed a rent rebate for this. She agreed that she had never provided a list of necessary repairs to the landlord until she filed her Application. The landlord said they were not informed in writing of repairs and they provided evidence of several plumbing repairs that they had done in 2005, 2011, and two in 2014.

In evidence is the Notice to End Tenancy for unpaid rent, statements of the parties, the tenancy agreement, a page of scrawled numbers done by the tenant according to the landlord, a list of damages, photographs and invoices.

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

Analysis:

Order of Possession:

I find the landlord is entitled to an Order of Possession. Although the tenant filed an Application to dispute and set aside the Notice to End Tenancy, I find she has not paid the outstanding rent. Although the tenant claimed repairs were not done, I find pursuant

to section 26 of the Act, she is not entitled to withhold rent whether or not the landlord fulfills their obligations under the Act. I dismiss the application of the tenant to set aside the Notice and I find the landlord is entitled to an Order of Possession. In light of the tenant's circumstances, the Order of Possession is effective January 31, 2014.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. The landlord claims \$2100 is owed including rent for January. I find the tenant disputes the calculations of the landlord but agrees that she owes \$1400. The landlord agreed in the hearing that receipts were not provided. I find the handwritten records provided by the landlord to be confusing and as the landlord testified, she had the tenant's partner write them without the tenant being present and he even agreed to \$200 in interest. I find the landlord may claim late fees to a maximum of \$25 a time according to section 7 of the Residential Tenancy Regulations if this is provided in the lease. There is no provision in this lease for a charge for late payments so I find extra charges for interest etc. are illegal. I find the landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent (other than some scrambled notes) and did not issue any receipts to the tenant. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that she owes only \$1400 in rent to January 31, 2015.

On the tenant's application, the onus is on her to prove on the balance of probabilities that she is entitled to a rent rebate for lack of repair. I find the weight of the evidence is that she submitted no lists of repairs or requests for repairs in writing to the landlord until she filed this Application. I find insufficient evidence that she informed the landlord of necessary repairs and they refused them. In fact, I find the weight of the evidence is that the landlord did plumbing repairs as necessary as supported by the invoices filed in evidence. I find no evidence that the tenant did repair herself and is entitled to reimbursement.

As the tenant is vacating the premises on January 31, 2015, I find it moot to issue an Order to do certain repairs which have not been proven as necessary sufficiently in evidence. No professional opinions of necessary repairs were submitted although the tenant said realtors had viewed the unit. I dismiss the application of the tenant.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 31, 2015 and to a monetary order as calculated below. I find them entitled to retain the security deposit to offset the amount owing and to recover filing fees for this application.

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for his application.

Calculation of Monetary Award:

Rental arrears to January 31, 2014	1400.00
Filing fee	50.00
Less security deposit (no interest 2010-14)	-300.00
Monetary Order to landlord	1150.00

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: January 14, 2015

Residential Tenancy Branch

