



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF

Introduction:

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

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended but the tenant said they never received the Notice to end Tenancy dated October 4, 2014 but agreed they received the Application for Dispute Resolution personally.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated October 4, 2014 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 2010, the security deposit was later used for unpaid rent and rent is currently \$1600 a month. The landlord said the tenant owes \$7400 in arrears but he will take \$5000. The tenant said he does not owe that amount of money and the landlord has received a number of \$400 payments from the Ministry since the Notice to End Tenancy was issued. He said the landlord receives \$400 from the Ministry for his wife, he receives another cheque for another occupant of the property and he has been paying the rest in cash. He contended that if they owed this large amount of money, the landlord would surely have ended their tenancy back in October 2014 when he allegedly served a Notice to End Tenancy. Instead, he has continued to collect rent. The

landlord said they had sold the home and they thought the tenants were leaving and were to be given a free month's rent so they did not bring an application at that time. However, now they want the rental arrears to be paid. The tenant said they might owe about \$800 but maintains that many payments were made by them and the Ministry after the Notice to End Tenancy was issued in October 2014 but he maintains they never received it or they would have disputed it at that time.

The tenant said the landlord has tried to evict him before and most recently in a hearing in February 2015, his application was denied. I read the Decision and the application was denied because the Notice to End Tenancy was issued for incorrect reasons pursuant to section 49. Apparently the home has been sold and a corporate landlord is requiring vacant possession.

The landlord only filed as evidence the Notice to End Tenancy and proof of service. There are no rental records or receipts; he said he can't find them but tried to put the onus on the tenant to supply receipts. The tenant said he only got receipts sometimes.

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

Analysis:

The onus of proof is on the landlord/applicant to prove on a balance of probabilities that the Notice to End Tenancy was issued for rental arrears and that it is still valid. I find insufficient evidence to support the landlord's application. Although the landlord was upset and contended that the tenant admitted he owed \$800 in the hearing, I find this does not make an October 2014 Notice valid. The Notice in October stated the tenant owed \$2400 as of October 1, 2014 and the tenant said many payments had been made since that Notice was issued. The landlord said he had received two payments of \$400 each. By accepting payments after ending a tenancy without limiting acceptance to "use and occupancy only", I find the landlord invalidates the Notice and reinstates the tenancy.

The landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that they paid rent after the Notice was issued. I find insufficient evidence to support issuing an Order of Possession or a Monetary Order for unpaid rent.

Conclusion:

I dismiss the Application of the landlord and give him leave to reapply.

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: March 11, 2015

Residential Tenancy Branch

