



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD MNDC FF

Introduction:

Both parties had filed applications. Both attended the hearing and gave sworn or affirmed testimony. The tenant confirmed they personally received a 10 Day Notice for unpaid rent dated February 2, 2018 to be effective February 12, 2018 which stated rent of \$675 was owed. The landlord said it was never paid. Two One Month Notices to End Tenancy for cause were also served in February 2018. The landlord also served her Application on the tenant personally. The tenant said they tried to serve their Application personally but the landlord was not answering the door so they left it in her mail slot; the landlord agreed she received it and also their Amendment. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act and the tenant's were sufficiently served pursuant to section 71 for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

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

The tenant applies to cancel Notices to End Tenancy for unpaid rent and for cause and to obtain orders

- e) That the landlord do repairs pursuant to sections 32 and 33 and;
- f) To obtain a rent rebate for repairs not done and facilities agreed upon and not provided.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a Monetary Order for rental arrears?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that they are entitled to a rent rebate?

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 October 1, 2017, that rent was \$2000 a month and a security deposit of \$1000 was paid. The landlord said she had signed a three month fixed term lease with the tenant and then a subsequent three month term. It is undisputed that the tenant did not pay the \$675 owed as of February 2, 2018 and has not paid rent for March or April 2018 so owes in total \$4675.

The tenants said they vacated on April 2, 2018 but the landlord said they did not contact her until April 9, 2018 to do the move-out inspection. The tenant said the landlord's telephone was blocked. The landlord said she checked her email every day and preferred that method of contact as the parties had problems with verbal discussions in the past. The landlord said she agreed to do walk through on April 10, 2018 but the tenants did not attend. The tenants said they did not get a response to their email so did not know they should attend.

The tenants request compensation or a rent rebate for problems suffered during the tenancy. They outlined the problems as follows:

1. The landlord constantly harassed them in March 2018 taking pictures and serving three Notices to End Tenancy.
2. In January 2018, after two notices of entry on January 26 and 27, she had repair people there was excessive times. On the family day weekend in February, she or repair persons were there for 3 whole days disrupting the family.
3. The landlord was constantly asking for personal information such as credit card numbers, affidavits as to the relationship between the tenants and social insurance numbers.
4. There was constant flooding from a crack in the foundation, from the sump pump and/or from windows improperly installed. The flooding affected the use of the laundry room and downstairs bathroom as the floor was wet and slippery. The tenant said she cleaned it up herself on February 10, 11, 17 and March 1, 2018. She referred to photographs in her evidence.
5. The tenant also said they should not be responsible for April's rent as they vacated early in April.

The landlord denies harassing the tenants. She said she responded to their requests for repairs in a timely manner. She had a concrete specialist attend and he found there was no water coming from the crack in the wall, it was coming from improperly installed windows and he sealed them on February 10, 2018. She provided his report in evidence. She said that excess use of water or putting a foreign object in the toilet can cause the sump pump to back up. When it did, she had the plumber attend. His report is in evidence. Regarding the April rent, the landlord said she did not get notified until April 9 that the tenants had vacated. This did not give her time to advertise and rent the unit for April so the tenants should be responsible for the rental loss.

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

Analysis:

I find the landlord would be entitled to an Order of Possession pursuant to the section 46 Notice to End Tenancy. However, I find the tenants have vacated so an Order of Possession is no longer required.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord provided sufficient evidence to prove the tenants owe rent of \$675 for February 2018 and \$2000 for each of March and April 2018 for a total of \$4675. I find the landlord entitled to retain the security deposit to offset the amount owing and to recover filing fees for her application.

On the tenant's application, section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that although the tenant may have vacated on April 3, 2018, they did not provide any advance notice to the landlord that they were ending the tenancy. In normal

circumstances, section 45 of the Act provides a tenant must give one month's notice to the landlord to end a tenancy, presumably so the landlord does not suffer rental loss. I find the tenant provided no notice and did not obey the 10 Day Notice to vacate but stayed without paying rent. I find they are not entitled to a rebate of rent for April 2018.

In respect to their claim for lack of repair, I find they complained of leaking water and the landlord had a concrete expert and a plumber attend at different times to address this issue. I find the reports of the plumber and concrete specialist support the landlord's credibility that she had items repaired. I find the landlord did not violate the Act or tenancy agreement as she arranged for timely repair. However, the landlord did state that the windows were installed improperly which caused the problems with water leakage. I find it credible that the tenant suffered some damages due to this as she had to clean up water on about 4 occasions and some of their belongings got wet. Although the tenant provided photographs of the alleged flooding, I found it was not possible to tell the amount or depth in the photographs. The tenant could not provide receipts for this loss, However Policy Guideline 16 provides:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find it reasonable to award them the nominal sum of \$200 for their labour in cleaning up the water.

Regarding their claim that the landlord constantly harassed them in March 2018 taking pictures and serving three Notices to End Tenancy and also in January by having repair people there for excessive times, I find the landlord was exercising her legal rights to serve Notices to End Tenancy pursuant to sections 46 or 47. I find this is not harassment. I also find the landlord served Notices of Entry pursuant to section 29 of the Act which again is her legal right; I find insufficient evidence that the landlord was entering for unlawful purposes. It appears even on the family day weekend in February, she or repair persons were there to address items raised by the tenant which they said were in need of repair. I find insufficient evidence that the landlord violated the Act or tenancy agreement so I find insufficient evidence to support this portion of their claim. I also find insufficient evidence that the landlord was constantly asking for personal information such as credit card numbers, affidavits as to the relationship between the tenants and social insurance numbers or that this caused the tenants to suffer any loss.

Section 38 of the Act was discussed and the landlord said she had not received the tenant's forwarding address in writing yet and she chose the option of retaining the security deposit to set off the amount owed by the tenant for unpaid rent.

Conclusion:

An Order of Possession is no longer required. I find the parties entitled to compensation as calculated below. I find the landlord entitled to recover filing fee for their application. The tenant's filing fee was waived.

Calculation of Monetary Award:

Unpaid rent for Feb.-March 2018	4675.00
Filing fee	100.00
Less security deposit	-1000.00
Less rebate awarded to tenant	-200.00
Total Monetary Order to Landlord	3575.00

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: April 11, 2018

Residential Tenancy Branch