



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNSD, FF

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenant was personally served with the Application for Dispute resolution hearing package by way of registered mail, and the 10 day Notice to End Tenancy by way of posting.

Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there money due and payable by the tenant?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on December 9, 2011. Rent is due on the 1st day of each month in the amount of \$850.00. A security deposit of \$425.00 was paid on December 7, 2011. The landlord served the tenant with a 10-Day Notice to End Tenancy on April 2, 2013, after the rent had fallen into arrears. The tenant did not pay all the rental arrears or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. Subsequent payments were made, received on a use and occupation basis. There are now rental arrears of \$800.00 owing to the landlord, along with late fees for April and May, of \$25.00 each..

Analysis

In the absence of the required full rental payment, or a dispute of the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. As the effective date of the Notice, as extended by the use and occupation period has passed, the landlord has established a right to possession.

The landlord is entitled to recover the rental arrears and late charges totalling \$850.00, and the \$50.00 filing fee from the tenant, and to retain the security deposit in partial satisfaction of the award.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$900.00. I order pursuant to section 38(1) that the full amount of the security deposit (\$425.00) be retained, in partial satisfaction of this monetary award. I further order that the remaining balance of the award due to the landlord, equalling \$475.00, be paid immediately by the tenant to the landlord.

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: May 09, 2013

Residential Tenancy Branch