



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD 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;
- 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.

SERVICE:

Both parties attended and the tenant agreed he received the Notice to end Tenancy dated March 14, 2013 as it was posted on his door and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated March 14, 2013 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 tenant commenced living in the premises in June, 2011, a security deposit of \$750.00 was paid and rent is currently \$1500 a month. It is undisputed that the tenant owed \$4500 in rent from March to May 2013 but that he paid it all on or about April 29, 2013. He said the landlord promised him that he could stay for a year if he paid all the arrears.

The landlord said she did not promise he could stay for a year as their tenancy is month to month. She said she promised he could stay a bit longer if he emailed her and made certain promises and he did not do that. She said she took the money on the basis of "use and occupancy only" and told this to the tenant, although she may have changed

her mind if he had made the promises she requested. She said he smokes in the unit and it is doing a lot of damage. She requests an Order of Possession. In evidence is the Notice to End Tenancy and a fax from the landlord to our office dated April 17, 2013 stating that she needs to increase the outstanding rent amount to \$4500.

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 that the landlord is entitled to an Order of Possession. Although there is no longer outstanding rent, I find the weight of the evidence is that the tenant is deemed to have received the Notice to End Tenancy on March 17, 2013 and according to the Act, he had 5 days from that date, to pay the outstanding rent or make application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy. He did neither and the time to do so expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. However the landlord said she would accept an Order of Possession issued effective June 30, 2013.

Monetary Order

The landlord no longer requires a monetary order.

Conclusion:

I find the landlord is entitled to an Order of Possession effective June 30, 2013. I find the landlord is entitled to recover filing fees paid for this application.

I HEREBY ORDER that the landlord may deduct \$50 from the security deposit to recover her filing fee. This will leave \$700 remaining in the tenant's security deposit to be dealt with after he vacates in accordance with section 38 of the Act.

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 17, 2013

Residential Tenancy Branch

