



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIGHT STAR INVESTMENT
and [tenant name suppressed to protect privacy]

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's agent agreed that the Notice to End Tenancy was probably posted on the door but they did not receive it as the tenant has been living elsewhere. The tenant's agent agreed that his sister who has power of attorney received personally the Application for Dispute Resolution. I find that the tenant was sufficiently served with the documents for the purposes of this hearing according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated May 3, 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 about 25 years ago, a security deposit of \$275 was paid on December 22, 1999 and rent is currently \$779 a month.

There have been at least two previous hearings with these parties under file # 799427, 801115 (both heard on April 29, 2013 and 807045 (heard on April 5, 2013). In the decision dated April 9, 2013, the arbitrator ordered certain repairs to be completed no

later than May 15, 2013 and that the tenant cooperate with the landlord by removing belongings and providing access to the rental unit to do the repairs. In the decision dated May 1, 2013, the arbitrator found the tenant was entitled to compensation equal to one and one half (1 1/2) months' rent and ordered that the tenant might withhold all of rent due for June (\$779) and half of the rent due for July (\$389.50). These orders were based on the assumption that rent had been paid for May 2013. The tenant had the continued obligation to pay the \$30 fee assessed for monthly parking.

The Notice to End Tenancy which is the subject of this hearing states that rent for May 2013 was not paid. The tenant's representative claims that he saw the tenant's sister put it under the landlord's door and provides a duplicate copy of the cheque for \$709 for rent plus one parking (\$809 -\$100 for two filing fees as ordered in the prior decisions). The landlord gave sworn testimony that this cheque was never received.

The tenant's representative said that in any case, the tenant has vacated the unit although he has still a few jackets in the closet. After discussion, the parties agreed to settle this particular file on the following terms and conditions:

Settlement Agreement:

1. The landlord will receive an Order of Possession effective two days from service.
2. The tenant will receive a monetary order for his security deposit plus interest.

The tenant said that they have filed another application to claim compensation from the landlord and this will be heard on July 9, 2013. For this hearing, both parties were advised to submit further evidence to support their claims, such as whether or not the rent for May was paid which might be proved by a cancelled cheque from the bank and detailed rental records.

There was further argument as to whether the tenant had complied with the previous orders to clear his suite so the work could commence. The tenant provided a DVD done on June 3, 2012 to show all belongings were removed from the floor, although he said that some jackets were still in the closet.

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

Analysis

Order of Possession

I find the tenancy has not been ended by the tenant since he has not removed all his clothing and not returned the key to the landlord. Based on the above noted settlement agreement, I find that the landlord is entitled to an Order of Possession effective two

days from service. I note that service may be by posting it on the door of the tenant's suite.

I find insufficient evidence that the rent for May has been paid but this will be the subject of a further dispute on July 9, 2013 for which the tenant has been advised to provide further proof of payment as part of his monetary claim.

Monetary Order

Pursuant to the above noted agreement, I find the tenant entitled to a monetary order for his security deposit plus interest to today's date.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service. No filing fee is awarded for this application as the matter was settled on the basis of the tenant receiving his full security deposit refunded.

I find the tenant entitled to a monetary order in the amount of \$299.33 for his security deposit plus interest.

The tenant has already made a further application for monetary compensation related to the granting of free rent, repairs and other matters and this is due to be heard July 9, 2013. I give both parties leave to reapply for monetary compensation for matters arising from this tenancy as the landlord claims he is also owed rental arrears. The parties have been advised to provide records and other objective evidence to assist an arbitrator in determining amounts owing.

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: June 11, 2013

Residential Tenancy Branch

