



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding I Strata Property Management Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNR, MNSD, OPR

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.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent 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 September 15, 2005. A security deposit of \$363.00 was paid at the start of the tenancy. Rent is due on the 1st day of each month in the amount of \$879.00. Rent for May, however, was reduced by \$75.00, as a result of a prior application by the tenant in which an order was made permitting a reduction of \$25.00 for use of the tenant's heater, and \$50.00 as recovery of the tenant's filing fee.

On May 3, 2013, the landlord served the tenant with a 10-Day Notice to End Tenancy, after not receiving rent for the month of May. The tenant did not pay any further rent and did not apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. The tenant no longer resides in the premises, but he has left some possessions there, and is still in possession of the keys, as he wishes to relinquish them only upon recovery of his key deposit.

The landlord alleges he will need to do significant renovations to the premises, and therefore is also claim loss of rent for July.

Analysis

As long as the tenant retains the keys, and has articles in the premises, he remains in legal possession. Given that he intentionally retains the keys, I do not find he has abandoned the premises at this time.

In the absence of the required 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 has passed, the landlord has established a right to possession.

The landlord is entitled to recover the rental arrears for May of \$804.00, and I accept that as a result of the tenant retaining the keys, and not having fully vacated, the landlord will undoubtedly lose all rental income for June (\$879.00), for which I find the tenant liable.

No costs for renovate or repair, or future rent losses in anticipation of such work, are appropriate to determine at this hearing, as I have no ability to determine such losses without proper evidence, and without a further claim being filed by the landlord, after possession is recovered by the landlord. As long as the tenant is in possession, he retains the right to effect any repairs or clean up. Accordingly, a claim for loss of July's rent is premature, and is dismissed, with liberty to reapply.

I order that the landlord recover his filing fee (\$50.00) from the tenant. I further order that the landlord may retain the tenant's security deposit in partial satisfaction of the monetary award made in this decision.

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 \$1,733.00, representing the rental arrears for May of \$804.00, and for June of \$879.00, together with recovery of the \$50.00 filing fee.

The security deposit including accrued interest to the date of this hearing, totals \$375.87. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$1,357.13, 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: June 14, 2013

Residential Tenancy Branch