



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 properly 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 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 April 1, 2013. Rent is due on the 1st day of each month in the amount of \$550.00. A security deposit of \$275.00 was paid at the start of the tenancy. The landlord served the tenant with a 10-Day Notice to End Tenancy on May 2, 2013, after not receiving rent for the month of May. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. May's rent was subsequently paid on May 24, and was accepted by the landlord on a use and occupation basis. The tenant continues to occupy the premises, but has paid no further rent.

Analysis

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, as extended by the use and occupation period to May 31, 2013, the landlord has established a right to possession.

I am satisfied that the landlord has lost rental income for at least half of June, and therefore award the sum of \$275.00 for loss of rental income, as well as a further \$50.00 representing recovery of the filing fee. The landlord may retain the security deposit in partial satisfaction of this sum.

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 \$325.00, representing loss of rental income for the first half of June, and recovery of the filing fee.

The security deposit including accrued interest to the date of this hearing, totals \$275.00. 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 \$50.00 for the filing fee, be paid immediately.

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