



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 landlord gave evidence that they served personally the Notice to end Tenancy dated September 2, 2013 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 September 2, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears, rental loss and filing fee?

Background and Evidence:

Both parties or representatives attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in November, 2012, a security deposit of \$687.50 was paid and rent is currently \$1375 plus 50% of gas and utility service. The landlord provided evidence of the rental ledger showing that the tenant owed rent of \$2328 to the end of August, 2013 and has not paid any rent for September or October 2013. The landlord claimed rental arrears of \$3728 on his application which includes rental loss for September but not for October 2013. He asks to retain the security deposit to offset the amount owing.

The tenant's representative attended the hearing. He said he rents a room from the tenant and he paid \$500 a month to the tenant; his last payment was made on September 15, 2013. He said the tenant has vacated the premises but he is still renting his room and had cleaned up some of the garbage left behind. He has no tenancy agreement with the landlord but did pay the landlord one direct payment of \$500 on May 24, 2013 on behalf of the tenant.

On the basis of the 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 to be enforced against both the tenant and the occupant. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has 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. An Order of Possession is issued effective two days from service. I find the occupant is not a tenant of this landlord as defined in the Act as the weight of the evidence is that he merely rented a room from the tenant and had no tenancy agreement with the landlord. The fact that he paid one \$500 payment to the landlord on behalf of the tenant, I find does not make him a tenant of this landlord.

Monetary Order

I find that there are rental arrears and loss in the amount of \$3728 to the end of September 2013. The security deposit may be retained to offset the amount owing.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I give the landlord leave to reapply for a monetary order for further rental loss or damages.

Calculation of Monetary Award:

Rent arrears and loss to Sept. 30, 2013	3728.00
Filing fee	50.00
Less security deposit (no interest 2012-13)	-687.50
Total Monetary Order to landlord	3090.50

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: October 31, 2013

Residential Tenancy Branch

