



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIR LABEL ENTERPRISES L
tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNSD, MNR, MNDC, FF

Introduction

The landlord applies for an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenants were personally served with the Application for Dispute resolution hearing package.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenants effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is the amount claimed by the landlord in fact due and payable by the tenants?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on January 1, 2013. Rent is due on the 1st day of each month in the amount of \$875.00. A security deposit of \$437.50 was paid. The landlord served the tenants with a 10-Day Notice to End Tenancy, after receiving only \$375.00 rent for the month of April. The tenants did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. Subsequently a payment of \$291.64 was made, which was accepted by the landlord on a use and occupation basis.

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 tenants are 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 remaining arrears for April totals \$208.36. I accept that the earliest date a new tenant could be secured is May 15, and find the tenants liable for the landlord's loss of May rent to that date (of \$437.50). The landlord is entitled to recover the rental arrears for April, loss of rent for May, and the filing fee from the tenants, and to retain the security deposit in partial satisfaction of the award.

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 tenants. Should the tenants 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 \$695.86, representing the rental losses and the recovery of the \$50.00 filing fee.

The security deposit including accrued interest to the date of this hearing, totals \$437.50. 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 \$258.36, be paid immediately.

The landlord is at liberty to file a further claim as against the tenants for any further loss of rental income, or any damage to the premises caused by the tenants.

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 03, 2013

Residential Tenancy Branch