



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

Although the Landlord only named one Applicant in their Application, there were two Tenants in the rental unit and both appeared at the hearing. In this decision I refer to both the Tenants, although any orders made will name only the Tenant on the Landlord's Application.

The Tenants vacated the rental unit and therefore an order of possession is no longer required.

During the course of the hearing the Agent for the Landlord reduced the amount claimed against the Tenants from one month of rent at \$1,200.93, to \$562.96 being one half of a months' rent for August, and waived the Landlord's claim against the parking fee.

I note that prior to the conclusion of the hearing the Tenants became argumentative and interruptive, and had to be cautioned about inappropriate behaviour.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on July 1, 2011, and at the end of the tenancy the monthly rent was \$1,125.93 per month. The Tenants paid a security deposit of \$520.00 on or about July 1, 2011. I note that no interest is payable on deposits held since 2009.

The tenancy agreement and the parties all agree that rent was payable on the first day of each month.

The Tenants wrote a letter to the Landlord dated June 24, 2013, stating "This is to serve you as one month's notice that we will be ending our tenancy. We will be moving out on August 1, 2013." [Reproduced as written.]

The Landlord claims that it did not receive this notice until sometime in July of 2013.

The parties agree that a second copy of the Notice to End Tenancy from the Tenants was given to the Landlord's Agent on July 9, 2013.

The Landlord wrote the Tenant on or about July 11, 2013, and informed them that "A Notice to Vacate must be received 1 month prior to the termination date and must be on the day before the next month's rent is due (i.e. the last day of the calendar month)." [Reproduced as written.] In this letter the Landlord includes a section 45(1) of the Act, and informs the Tenants they accept the end of the tenancy effective August 31, 2013.

The Tenants replied to this letter and again cited section 45 of the Act. The Tenants write that they sent the Landlord their Notice to End Tenancy on June 24, 2013, and therefore it was deemed received by the Landlord five days later under section 90 of the Act. The Tenant included a portion of section 90 of the Act. The Tenants then confirm they want the tenancy to end on August 1, 2013, in this same letter.

The Tenants testified they vacated the property before July 31, 2013, and argue that the condition inspection report could have been done in July of 2013. The outgoing condition inspection report was conducted on August 1, 2013.

The Tenants argue the Landlord should not get any rent due to the technicality of only being one day late in their Notice to End Tenancy.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants have breached section 26 of the Act by failing to pay rent to the Landlord for August of 2013.

If the Tenants had wanted to end the tenancy on July 31, 2013, they should have dated their Notice to End Tenancy for July 31, instead of August 1, 2013.

July 31, 2013 was the day before rent was due for the month of August 2013, and therefore, section 45 of the Act required the Tenants to date their Notice to End Tenancy with an effective date of July 31, 2013.

Section 45 reads as follows:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy **effective on a date that**

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) **is the day before the day in the month**, or in the other period on which the tenancy is based, **that rent is payable under the tenancy agreement**.

[**Emphasis** added.]

Regardless of the date when the Landlord received the Notice to End Tenancy from the Tenants, the Tenants had dated their Notice to End effective in the month of August. This indicated to the Landlord that the Tenants wanted to retain possession of the rental unit into the month of August, which precluded the Landlord from renting unit to someone else for occupancy on August 1, 2013. Therefore, the Landlord is entitled to loss of rent for August.

Furthermore, under section 53(3) of the Act, the Tenants' Notice to End Tenancy would have automatically corrected to August 31, 2013, as they were required to provide the Notice to be effective on the day before the day in the month that rent is due.

Nevertheless, the Landlord mitigated their losses for August, as required under section 7 of the Act, by re-renting for August 15, 2013. This is what led the Landlord to reduce their claim to ½ a month of rent in the hearing.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenants breached the Act and tenancy agreement, and is entitled to monetary compensation for the breach.

I find the Landlord have established a total monetary claim of **\$612.96** comprised of ½ of the rent for August and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposit of **\$520.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$92.96**.

This order must be served on the named Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants gave the Landlord a Notice to End Tenancy with an effective date of August 1, 2013, and this caused a loss of rent for ½ a month to the Landlord. The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 19, 2013

Residential Tenancy Branch

