



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlords attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended. The only participant who joined the call was the landlords' agent, who testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on October 26, 2015. The landlords have provided a copy of a Canada Post cash register receipt bearing that date and a copy of a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlords' agent (hereafter referred to as the landlord) testified that this fixed-term tenancy began on September 1, 2014 and expired on August 31, 2015 thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$960.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$480.00 which is still held in trust by the landlords. A copy of the tenancy agreement has been provided.

The tenant failed to pay rent when it was due and on October 5, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided and it is dated October 5, 2015 and contains an effective date of vacancy of October 18, 2015 for unpaid rent in the amount of \$960.00 that was due on October 1, 2015. No rent has been paid since the issuance of the notice and the tenant is now in arrears of rent the sum of \$2,880.00. The landlords have not been served with an application for dispute resolution by the tenant disputing the notice.

The tenancy agreement also provides for a late fee of \$25.00 and the landlords seek an Order of Possession as well as a monetary order for: \$25.00 for the late fee, \$2,880.00 for unpaid rent, \$50.00 for recovery of the filing fee, and an order permitting the landlords to keep the security deposit in partial satisfaction of the claim.

Analysis

Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date, which must be no earlier than 10 days after receipt or deemed receipt of the notice. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. I also accept the undisputed testimony of the landlord that the notice was served on October 5, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or October 8, 2015. The tenant has not paid the rent and has not disputed the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled under the *Act* to an Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant has not paid any rent since the issuance of the notice, and the landlords have established a monetary claim for unpaid rent for October, November and December, 2015 totalling \$2,880.00.

I have reviewed the tenancy agreement and I am satisfied that the tenant agreed to a late payment fee of \$25.00 and the landlords have established that amount.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlords to keep the \$480.00 security deposit and I grant a monetary order in favour of the landlords for the difference in the amount of \$2,475.00 ($\$2,880.00 + \$25.00 + \$50.00 = \$2,955.00 - \$480.00 = \$2,475.00$).

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further order the landlords to keep the \$480.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,475.00.

These orders are final and binding and may be enforced.

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: December 18, 2015

Residential Tenancy Branch

