



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord's agent withdrew their application to keep the security deposit as no deposit was paid by the tenant.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 18, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

Background and Evidence

This fixed term tenancy started on October 01, 2007 and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$719.20 and increased to \$746.52 on March 01, 2013 plus \$25.00 per month for parking. Rent and parking fees are due on the 1st of each month.

The landlord's agent testifies that the tenant failed to pay rent and parking for February of \$719.20 and \$25.00 or for March of \$746.52 and \$25.00 on the day they were due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 04, 2013. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$1,515.72 which was due on March 01, 2013. This amount also included parking fees charged to the tenant. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 17, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did pay \$1,000.00 on March 15, 2013 which was accepted for use and occupancy only. This left an outstanding balance owed of \$515.72.

Since that time the tenant also failed to pay rent or parking for April, 2013 of \$746.52 and \$25.00. The tenant paid \$744.00 on April 10, 2013 this was also accepted for use and occupancy only and left an outstanding balance of \$543.24. The tenant made another payment which was accepted for use and occupancy only on March 19, 2013 of \$515.72. The total amount of outstanding rent is now \$ 27.52 and the landlord requests a Monetary Order to recover this sum plus the \$50.00 filing fee.

The landlord requests an Order of Possession to take effect at the end of April, 2013.

The landlord has provided a copy of the tenancy agreement, the rent ledger and a copy of the 10 Day Notice to End Tenancy.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the landlord has established a claim for \$27.52 in unpaid rent. Consequently, the landlord will receive a monetary award for **\$27.52** pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$77.52**. The order

must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on April 30, 2013** This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: April 11, 2013

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Residential Tenancy Branch