



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on April 23, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on April 28, 2013, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of; the 10 Day Notice to end tenancy for unpaid rent; proof of service documents; the tenancy agreement; the tenancy ledger; and copies of receipts for payments received after serving the 10 Day Notice which indicate "for use and occupancy only".

The Landlord stated that the parties entered into a fixed term tenancy agreement that began on March 1, 2011 and switched to a month to month tenancy after February 29, 2012. Rent is payable on the first of each month and started at \$1,375.00 and as of

March 1, 2013 was increased to \$1,488.61 per month. The Tenant paid \$687.50 on March 1, 2011, as the security deposit.

The Landlord provided evidence that indicated the Tenant was served a 10 Day Notice when it was posted to his door on April 2, 2013, for \$4775.46 for accumulated unpaid rent that was due on April 1, 2013. The Landlord referred to the Tenant ledger provided in his evidence and testified that four additional payments had been received. Receipts were issued to the Tenant for use and occupancy only. There were also charges applied for the May 2013 rent and storage locker fee of \$20.00. The current balance owing is \$2,934.07 and is comprised of the following:

	Balance Due
April 10, 2013 Ledger balance after \$700.00 payment	\$4,075.46
Less April 21, 2013 payment of \$1,000.00	\$3,075.46
Plus May 1, 2013 rent of \$1,488.61	\$4,564.07
Plus May 1, 2013 locker rental of \$20.00	\$4,584.07
Less May 13, 2013 payment of \$150.00	\$4,434.07
Less May 13, 2013 payment of \$500.00	\$3,934.07
Less May 21, 2013 payment of \$1,000.00	\$2,934.07

The Landlord has sought to regain possession of the unit as soon as possible and to recover the accumulated unpaid rent of \$2,934.07.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on April 5, 2013, three days after it was posted to his door, and the effective date of the Notice is **April 15, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent in full and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$4,075.46 which was due April 1, 2013. The Tenant has made subsequent payments towards this accumulated balance of \$2,650.00 (\$1,000.00 + \$150.00 + \$500.00 + \$1,000.00) leaving a total unpaid balance

owing up to April 30, 2013 of \$1,425.46. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Therefore, I award the Landlord a Monetary Award for unpaid rent of **\$1,425.46**.

As noted above this tenancy ended **April 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of May 2013, in the amount of **\$1,488.61**.

The Landlord has also claimed \$20.00 for a locker fee for May 2013; however, the Landlord did not provide evidence to support what type of agreement was entered into for this locker. Therefore, as this tenancy ended April 15, 2013, I find there to be insufficient evidence to support that the locker agreement was still in effect as of May 2013. Accordingly, I dismiss the claim of \$20.00 for the locker for May 2013, without leave to reapply.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Accumulated unpaid rent to April 30, 2013	\$1,425.46
Use and Occupancy & loss of rent to May 31, 2013	1,488.61
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,964.07
LESS: Security Deposit \$687.50 + Interest 0.00	<u>-687.50</u>
Offset amount due to the Landlord	<u>\$2,276.57</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$2,276.57**. This Order is legally binding and must be served upon the Tenant. In the event that the

Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: May 21, 2013

Residential Tenancy Branch