



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, FF

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenant was properly served with the Application for Dispute resolution hearing package by way of registered mail.

At the hearing, a representative for the tenant advised that the tenant was unfortunately unable to join the hearing due to health concerns, and requested that the hearing be postponed. The representative advised the tenant was in hospital, but could not advise as to any date when the tenant would be available. On the contrary, she advised it is possible the tenant will not return from the hospital to the rental unit. The landlord opposed any adjournment of the hearing.

I determined that the hearing would continue, despite the absence of the tenant. In so deciding, I considered that an indefinite postponement was tantamount to a dismissal of the claim. I also considered that the subject Notice to End Tenancy allegedly served by the landlord to the tenant was never disputed by the tenant, raising a conclusive presumption of the accepting of the notice by the tenant, as more clearly set out below.

The tenant's representative did not participate in any further portion of the hearing.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rental money payable to the landlord?
- Is the landlord entitled to retain any of the deposit?

Background and Evidence

This tenancy began on February 1, 2001. Rent is due on the 1st day of each month in the amount of \$740.76. A security deposit of \$270.00 was paid on January 27, 2001. The landlord has recently served numerous 10-Day Notice to End Tenancy to the tenant, all for failure to pay rent. The most recent Notice was served May 2, 2013, by way of posting it upon the tenant's door. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. Two subsequent rental payments were received by the landlord. A payment was receipted May 21, 2013 by the landlord on a use and occupation basis. A subsequent payment was received subsequent to the filing of this application, and the landlord submits this payment was also accepted on a use and occupation basis. The tenant's payments have exceeded the rent requirements to the end of June, by \$26.48, as a portion of the May payment made was to be applied towards the landlord's filing fee.

Analysis

Service of the Notice to End Tenancy by posting is a permitted form of service, under section 88(g) of the Act. Section 90(c) deems it to have been received on the 3rd day after posting.

Service of the application for this hearing by way of registered mail is also a permitted form of service, under section 89(1)(c). Section 90(a) deems it to have been received on the 5th day after mailing.

The rental payments by the tenant were accepted by the landlord on a use and occupation basis, and not as a reinstatement of the tenancy. 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 tenant is 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 extended by virtue of the use and possession arrangements, which have been effective to delay the end of the tenancy until June 30, 2013. The landlord has established a right to possession as of that date.

The landlord is awarded the sum of \$23.52, representing the unpaid portion of the filing fee, which I find payable by the tenant. The landlord may retain a portion of the security deposit in satisfaction of this sum.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective on the 30th day of June, 2013. Should the tenant 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 \$23.52, representing the recovery of the balance of the filing fee. This sum may be retained from the tenant's deposit.

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: June 13, 2013

Residential Tenancy Branch