



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 MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:43 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door on April 5, 2013, seeking an end to this tenancy by April 18, 2013. She said that on April 16, 2013, the tenant sent the landlord a written notice to end this tenancy by April 26, 2013. The landlord testified that one of the landlord's representatives sent the tenant copies of the landlord's dispute resolution hearing package and written evidence package by registered mail on May 8, 2013. The landlord provided the Canada Post Tracking Number to confirm this mailing. She also testified that Canada Post's On-Line Tracking system revealed that the tenant signed for receipt of the registered mail on May 9, 2013. I am satisfied that the above documents were served in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on March 1, 2013. Monthly rent was set at \$840.00, payable on the first of each month. The tenant paid a \$420.00 security deposit on or about February 24, 2013. The landlord continues to hold that deposit.

The landlord applied for a monetary award of \$1,680.00 plus the recovery of the landlord's \$50.00 filing fee. The monetary award requested was for unpaid rent for April

and May 2013. Although the landlord said that the tenant vacated the rental unit on April 26, 2013, the landlord said that no rent was paid for April or May 2013. She testified that the landlord advertised the availability of the rental unit on its own corporate website as well as on three popular rental websites. She said that after May 27, 2013, she was successful in locating a new tenant who took occupancy of the rental unit as of June 1, 2013 for a monthly rent of \$850.00.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the February 28, 2014 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*. I also note that even in a periodic tenancy, a tenant must give the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, even if this were a periodic tenancy, in order to avoid any responsibility for rent for May 2013, the tenant would have needed to provide her notice to end this tenancy before April 1, 2013.

There is undisputed evidence that the tenants did not pay any rent for April or May 2013. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises so as to minimize the tenant's losses. Steps were taken to try to rent the premises to a new tenant and a new tenant was located who took occupancy as of June 1, 2013. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's loss.

I issue a monetary award in the landlord's favour in the amount of \$840.00 for each of April and May 2013. As the landlord was successful in obtaining \$10.00 more monthly rent for the rental premises for the remainder of this tenancy, I deduct \$10.00 per month from the landlord's monetary award for the period from June 1, 2013 until the February 28, 2014 end to the original fixed term tenancy.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms:

Item	Amount
Unpaid April 2013 Rent	\$840.00
Unpaid May 2013 Rent	840.00
Less Difference in Rent Obtained by Landlord from Rental Unit from June 1, 2013 until February 28, 2014 (\$850.00 - \$840.00 = \$10.00 @ 8 months = \$80.00)	-80.00
Less Security Deposit	-420.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,230.00

This Order allows the landlord to retain the tenant's security deposit.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 26, 2013

Residential Tenancy Branch

