



Dispute Resolution Services

Page: 1

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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2013 for a fixed term ending January 31, 2014.

Rent of \$1,105.00 is payable in advance on the first day of each month. The Landlord states that the Tenant is in rental arrears from March 2013, paid no June 2013 rent and that on June 4, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Landlord states that the Tenant paid \$1,125.00 on July 1, 2013 and that no receipt was provided

to the Tenant for this payment. The Landlord claims rental arrears to June 1, 2013 and unpaid June 2013 rent.

The Tenant states that there are no arrears from March 2013 as the previous landlord had told him near the end of February 2013 that he had a rental credit of \$550.00 and that the Tenant only need pay \$625.00 for March 2013 rent. The Tenant states that he paid June's rent on June 28, 2013, that he has paid rent late but has always kept the rent paid each month and that his intention is to continue with renting the unit until the end of the term. The Landlord states that she has no evidence to dispute any rental credit to the Tenant and upon request, the Tenant provided the Landlord with the name of the previous landlord that informed the Tenant about the credit. The Landlord provided a copy of an accounting for the unit and it is noted that the Landlord's accounting evidence shows a credit of \$595.00 at the end of February 2013. It is further noted that the rental arrears amount being claimed by the Landlord include debits for two security deposits. The Landlord states that they collected \$550.00 for each of a security deposit and pet deposit. It is noted that the accounting evidence notes that \$552.50 was debited as a security deposit. Credits from the Tenant are not identified as either rental payments or security deposit payments.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. If a landlord accepts rent after the effective date of the notice to end tenancy, the intent of the parties will determine whether the tenancy has been reinstated. Noting that the Landlord's accounting evidence on rental amounts owing includes security deposit debits and as the Landlord had not provided evidence of the allocation of the Tenant's payments towards either the rent or the security deposit, I find that the Landlord has not established the amount being claimed as unpaid rent prior to June 1, 2013. I find it more likely that this amount being claimed includes an amount for a security deposit, which is not an amount to be included as unpaid rent.

As the Landlord collected an amount greater than the rent payable for June 2013 after the effective date of the Notice without indicating that the amount was being accepted for use and occupancy only and considering the Tenant's intention to continue with the tenancy, I find that the tenancy has been reinstated the tenancy and that the Notice is no longer valid. As the Notice is not valid, I dismiss the Landlord's application. The tenancy continues.

Conclusion

The Landlord's application is dismissed.

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 29, 2013

Residential Tenancy Branch

