



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 concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient."

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, tenancy began May 1, 2010. Monthly rent is due and payable in advance on the first day of each month. Presently, monthly rent is \$1,000.00. A security deposit of \$480.00 was collected.

Arising from rent which was unpaid when due on October 1 and November 1, 2013, the landlord issued 2 separate 10 day notices to end tenancy, respectively, dated October 2 and November 4, 2013. The first notice was served by way of posting on the unit door on October 2, and the second notice was served by way of posting on the unit door on November 5, 2013. Copies of both notices were submitted in evidence. Subsequently, the tenant made no further payment toward rent and he continues to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with 2 separate 10 day notices to end tenancy for unpaid rent dated October 2 and November 4, 2013. The tenant did not pay the outstanding rent within 5 days of receiving either notice, and did not apply to dispute either notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice(s). Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for compensation, I find that the landlord has established a claim of **\$3,050.00**:

\$1,000.00: *unpaid rent October 2013*

\$1,000.00: *unpaid rent for November 2013*

\$1,000.00: *unpaid rent for December 2013*

\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$480.00**, and I grant the landlord a **monetary order** for the balance owed of **\$2,570.00** (\$3,050.00 - \$480.00).

The landlord also seeks to recover a \$25.00 NSF fee, in addition to 3 fees assessed for the late payment of rent, each in the amount of \$25.00. In this regard, section 7 of the Regulation speaks to **Non-refundable fees charged by landlord**, and provides in part:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

In the absence of a full copy of the written tenancy agreement in evidence, I am unable to find that the tenancy agreement provides for the assessment of either of the above 2 fees sought by the landlord. Accordingly, this aspect of the application is dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,570.00**. Should it be necessary, this order may be served on the tenant, filed in the 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: December 17, 2013

Residential Tenancy Branch

