



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 a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or loss of rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted registered mail receipts, including tracking numbers, as proof the hearing documents were sent to each tenant at the rental unit on October 24, 2013. The registered mail was returned as unclaimed. The landlord testified that the tenants were seen at the residential property at the time of mailing the registered mail packages. In the absence of evidence to the contrary, I accepted that the tenants were residing at the rental unit at the time of mailing the hearing documents.

Pursuant to section 90 of the Act a person is deemed to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail.

Based upon the above, I was satisfied the landlord served the tenants with the hearing documents in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

Preliminary and Procedural Matters

In filing the Application for Dispute Resolution it appears the landlord transposed the female tenant's first and last name. I have amended the Application for Dispute Resolution to reflect the female tenant's name as it appears on the tenancy agreement and 10 Day Notice.

At the outset of the hearing the landlord orally requested the Application be amended to include loss of rent for December 2013. The landlord acknowledged that the tenants have not been seen at the property since October 2013 and the landlord has not entered the unit to determine whether the tenants have vacated the rental unit. I did not

further consider this request for amendment as I was not satisfied the landlord took reasonable action to mitigate loss of rent for December 2013 by determining whether the unit had been vacated several weeks ago.

The landlord confirmed that an Order of Possession is still desired as it is possible the tenants are still occupying the rental unit. Should the tenants continue to occupy the rental unit the landlord is at liberty to file another Application for Dispute Resolution seeking loss of rent for December 2013.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I noted the tenancy agreement identifies a different landlord than the landlord filing this Application for Dispute Resolution. I heard that the current landlord acquired the property at the end of August 2013.

The one-year fixed term tenancy commenced August 1, 2013 and the tenants paid a security deposit of \$435.00. The tenants are required to pay rent of \$870.00 and parking of \$10.00 on the 1st day of every month.

I noted there is a notation in the tenancy agreement that parking space #15 was for their use for the "month of August 2013 only". The landlord explained that the tenants were provided two parking spaces for the month of August 2013 only and the monthly charge of \$10.00 is for the one parking space to be provided throughout the tenancy.

The tenants failed to pay rent and parking payable for the months of September 2013 and October 2013. On October 3, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of \$1,760.00 was outstanding as of October 1, 2013 and has a stated effective date of October 16, 2013. The landlord testified that the tenants did not pay the outstanding rent.

In filing this Application for Dispute Resolution the landlord seeks to recover unpaid rent for September 2013 and October 2013 and loss of rent for the month of November 2013.

Documentary evidence provided for this proceeding included: portions of the tenancy agreement; the 10 Day Notice; the tenants' ledger; and, registered mail receipts.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice on the tenant's door on October 3, 2013 and it is deemed to be received by the tenants three days after posting under section 90 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended on October 16, 2013. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants in the event the tenants have not already vacated or abandoned the rental unit. Should the rental unit already be vacated or abandoned, possession of the rental unit automatically reverts to the landlord and it is unnecessary to enforce the Order of Possession through the court.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent and parking for September and October 2013 in the amount of \$1,760.00.

I find the landlord entitled to recover loss of rent for the month of November 2013 as I heard the tenants did not give the landlord any advance notice of their intention to vacate the rental unit prior to issuance of the 10 Day Notice. Therefore, I find it reasonable in the circumstances presented to me that the landlord suffered a loss of rent for the month of November 2013 due to the tenant's breach of the Act and tenancy agreement.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent and parking: as per 10 Day Notice	\$ 1,760.00
Loss of Rent and parking: November 2013	880.00
Filing fee	50.00
Less: security deposit	<u>(435.00)</u>
Monetary Order	\$2,255.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants in the event the unit has not already been vacated by the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,255.00 to serve and enforce as necessary.

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 04, 2013

Residential Tenancy Branch

