



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 tenant did not appear at the hearing. The landlord submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit on October 24, 2013. The registered mail was returned as unclaimed. 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. The landlord also confirmed that the tenant is still occupying the rental unit.

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

At the outset of the hearing the landlord orally requested the Application be amended to include loss of rent for December 2013 as the tenant is still occupies the rental unit. As the tenant has continued to benefit from use and occupation of the rental unit I amended the Application and have considered the request in this decision.

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

The one-year fixed term tenancy commenced May 1, 2013 and the tenant paid a security deposit of \$420.00. The tenant is required to pay rent of \$840.00 on the 1st day of every month.

The tenant failed to pay \$80.00 of the rent due for September 2013 and did not pay any rent for the month of 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 \$920.00 was outstanding as of October 1, 2013 and has a stated effective date of October 16, 2013. The landlord testified that the tenant did not pay the outstanding rent, did not pay any monies for subsequent months' rent, and continues to occupy the rental unit.

The landlord seeks to recover unpaid rent for September 2013 and October 2013 and loss of rent for the months of November 2013 and December 2013 as the tenant has not given up possession of the rental unit.

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

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 tenant three days after posting under section 90 of the Act.

Since the tenant 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 and the

landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for September and October 2013 in the amount of \$920.00. I find the landlord entitled to recover loss of rent for the month of November 2013 and a portion of December 2013 since the tenant continues to occupy the rental unit. I find it reasonable to award the landlord loss of rent for December 1 – 15, 2013 on this date after taking into consideration the possibility the landlord may succeed in re-renting the unit part way through this month. However, should the landlord suffer further loss of rent, or other losses, as a result of the tenant's breach of the Act or tenancy agreement the landlord is at liberty to file another Application for Dispute Resolution to seek additional compensation from the tenant.

I authorize the landlord to retain the tenant's 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: as per 10 Day Notice	\$ 920.00
Loss of Rent: November 2013	840.00
Loss of Rent: December 1 – 15, 2013	420.00
Filing fee	50.00
Less: security deposit	<u>(420.00)</u>
Monetary Order	\$1,810.00

To enforce the Monetary Order it must be served upon the tenant 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 tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,810.00 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

