



Dispute Resolution Services

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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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 25, 2013, to the tenant (ZS), a Canada post tracking number was provided as evidence of service. The landlord's agent stated the Canada post track history indicated the package was successfully delivered on October 31, 2013. I find that the tenant (ZS) has been duly served in accordance with the Act.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 25, 2013, to the tenant (JW), a Canada post tracking number was provided as evidence of service. The landlord's agent stated the Canada post track history indicated the package was successfully delivered on October 28, 2013. I find that the tenant (JW) has been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began July 1, 2009. Current rent was \$1,395.00 per month, payable on the first day of each month. The tenants paid a security deposit of \$637.50.

The landlord's agent testified that the tenants were in rent arrears as their cheque for September 2013, was returned for insufficient funds.

The landlord's agent testified that the tenants paid on October 1, 2013, rent for October; however, they failed to pay the outstanding rent due for September 2013.

The landlord's agent testified that on October 2, 2013, the tenants were served with a notice to end tenancy for non-payment of rent, by posting to the door, which was witnessed. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice. Filed in evidence is a copy of the notice to end tenancy.

The landlord's agent testified the tenants did not pay the outstanding rent within five days and did not dispute the notice to end tenancy. The landlord's agent stated the tenants paid rent for November and December 2013, however, the tenants were informed that they would not be reinstating the tenancy unless the full balance of unpaid rent was paid. The landlord's agent confirmed the tenants still have not paid the outstanding rent. Filed in evidence is a statement of account.

The landlord's agent testified they seek an order of possession and a monetary order for non-payment of rent and to recover the NSF fee of \$25.00.

Analysis

Based on the testimony of landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on October 2, 2013, by posting to the door, which was witnessed. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$1,470.00** comprised of unpaid rent, NSF fee and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$637.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$832.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 03, 2013

Residential Tenancy Branch

