



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 MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing and evidence was served on the tenant by registered mail on November 22, 2013, and a registered mail tracking number was submitted in evidence. The agent stated that the registered mail package was addressed to the tenant at the rental unit address and that the landlord did not receive any information indicating that the tenant vacated the rental unit until receiving information from an ex-girlfriend of the tenant, KW, on December 13, 2013, that the tenant vacated the rental unit on or about that date. The agent testified that according to the postal registered mail tracking website, the package was redirected to the tenant's new address and was eventually returned to sender. Section 90 of the *Act* indicates that documents served by registered mail, are deemed served five days after they are mailed. Based on the above, I find the tenant was deemed served as of November 27, 2013. I note that refusal or neglect to accept registered mail does not constitute grounds for a Review Consideration application. I accept that the tenant was served with the landlord's evidence in accordance with the *Act*.

Preliminary and Procedural Matter

The agent testified that based on a tip from the tenant's ex-girlfriend received on December 13, 2013, they deemed that the tenant abandoned the rental unit on or about that date. The agent testified that the landlord posted a 24 hour notice of entry on the tenant's door on December 13, 2013 indicating that they would be entering the rental unit on December 17, 2013. The agent stated that the notice was still on the tenant's door on December 17, 2013, when the landlord entered the rental unit to find the rental unit had been abandoned by the tenant.

As a result, the agent requested to withdraw their claim for an order of possession as the landlord has already received possession of the rental unit back from the tenant who abandoned the rental unit on or about December 13, 2013. I find that the landlord's withdrawal of their request for an order of possession does not prejudice the tenant in any way.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A fixed term tenancy agreement began on September 1, 2012 and reverted to a month to month tenancy after August 31, 2013. Monthly rent in the amount \$975.00.00 was due on the first day of each month and was increased under the *Act* as of September 1, 2013, to \$1,012.05 per month. The tenant paid a security deposit of \$487.50 at the start of the tenancy which the landlord continues to hold.

Although the landlord originally claimed a parking fee, the agent confirmed that there was no parking amendment submitted in evidence and that they were no longer claiming the parking amount as part of their application. The agent stated that the landlord was claiming for unpaid rent for the month of November 2013 in the amount of \$1,012.05, and unpaid rent of \$1,012.05 for the month of December 2013, and to offset that amount with the tenant's security deposit.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated November 4, 2013 was posted to the tenant's door, but not

disputed by the tenant. According to the agent, the tenant remained in the rental unit beyond the effective vacancy date of the 10 Day Notice which was November 17, 2013 and that according to the tenant's ex-girlfriend, the tenant did not vacate the rental unit until December 13, 2013. The agent testified that the landlord has suffered a loss of unpaid rent for November 2013 and December 2013 for a total amount of \$2,024.10 in unpaid rent. The agent stated that the tenant did not dispute the 10 Day Notice or pay the rent owed.

The agent stated that the tenant has not provided their written forwarding address to the landlord to date. The landlord submitted a copy of the written tenancy agreement, 10 Day Notice dated November 4, 2013, a copy of the rent increase form, documents to support the proof of service, and other documents in evidence.

Analysis

Based on documentary evidence, the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The agent testified that the tenant failed to pay \$1,012.05 for November 2013 rent, and failed to pay \$1,012.05 for December 2013 rent, for a total of \$2,024.10 in unpaid rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find the tenant breached section 26 of the *Act* by failing to pay rent for November 2013 and December 2013.

Based on the above, I find the landlord has met the burden of proof and I grant the landlord **\$2,024.10** for unpaid rent as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – The landlord has established a total monetary claim of **\$2,074.10** comprised of \$2,024.10 in unpaid rent, plus the \$50.00 filing fee. I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$487.50, which has accrued \$0.00 in interest to date. **I ORDER** the landlord to retain the tenant's full security deposit of \$487.50 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,586.60**. This order must be

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

Conclusion

The landlord has established a total monetary claim of \$2,074.10 comprised of \$2,024.10 in unpaid rent, plus the \$50.00 filing fee. The landlord has been ordered to retain the tenant's full security deposit of \$487.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$1,586.60. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 5, 2014

Residential Tenancy Branch

