



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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:40 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's representative (the landlord) testified that one of the landlord's representatives posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 3, 2014. The landlord testified that he sent a copy of the dispute resolution hearing package to the tenant by registered mail on January 27, 2014. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on February 1, 2014, the fifth day after its registered mailing.

At the commencement of the hearing, the landlord testified that the tenant has vacated the rental unit and the landlord no longer required an Order of Possession. The landlord's application for an Order of Possession is hereby withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the

monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on March 1, 2010. The tenancy converted to a periodic tenancy when the first term expired. Monthly rent by the end of the tenancy was set at \$1,151.82, payable in advance on the first of each month. The landlord continues to hold the tenant's \$520.00 security deposit paid on February 16, 2010.

At the hearing, the landlord reduced the amount of the requested monetary award from \$2,355.64 to \$1,450.23. He said that the tenant did not pay his \$1,151.82 for any portion of January 2014, nor did the tenant pay \$25.00 for parking for that month. The landlord said that the landlords were successful in finding a new tenant for the rental unit who took occupancy on February 4, 2014. He said that the new tenant is paying the same monthly rent as was paid by the previous tenant, \$1,151.82. However, the landlord was only able to charge the new tenant for the pro-rated amount of rent owing from February 4, 2014, until the end of February 2014. The landlord testified that the landlord's loss of rent for February 2014 was the pro-rated difference of \$148.41, not paid by the new tenant for that month. In checking these figures, it would appear that the landlord has included a \$25.00 parking charge in this calculation of the pro-rated difference in rent for which he held the tenant responsible.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2014, the tenant would have needed to provide his notice to end this tenancy before January 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing.

As the tenant did not provide the above notice, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for January and February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord

claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for February 2014. In fact, the landlord successfully re-rented the premises as of February 4, 2014, and in doing so limited the tenant's exposure to the landlord's loss in monthly rent for February 2014 to \$123.41 ($\$1,151.82 \times 3/28 = \123.41). As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's loss of rent for February 2014.

Based on the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of \$1,151.82 for rent owing from January 2014. I also find that the landlord is entitled to a monetary award of \$123.41, the pro-rated amount of the landlord's loss of rent for February 2014, as a result of the tenant's actions.

I dismiss the landlord's application for \$25.00 in parking charges for January and February 2014 without leave to reapply, as these do not form part of the Residential Tenancy Agreement entered into written evidence by the landlord.

I allow the landlord to retain the tenant's \$520.00 security deposit in partial satisfaction of the above monetary award. No interest is payable on this deposit over this period.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the tenant's security deposit:

| Item | Amount |
|---|-----------------|
| Unpaid January 2014 Rent | \$1,151.82 |
| Landlord's Loss of Rent February 2014 | 123.41 |
| Less Security Deposit | -520.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$805.23 |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: March 12, 2014

Residential Tenancy Branch

