



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:

Landlord's application filed April 22, 2014: OPR; MNR; MNDC; MNSD; FF

Tenant's application filed May 8, 2014: CNR

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession and a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent.

The Landlord's agent CW and the Tenant CA gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

CW testified that she sent the Landlord's Notice of Hearing documents to CA by registered mail to the rental unit on April 24, 2014. CW stated that she posted copies of the Landlord's documentary evidence to the Tenant's door. CA stated that she did not receive the Landlord's documentary evidence because her neighbour keeps taking down notices posted to her door.

CA testified that she served the Landlord with her Notice of Hearing documents by handing the documents to the Landlord's agent on May 8, 2014. CA provided documentary evidence to the Residential Tenancy Branch but did not serve the Landlord with copies of the evidence.

CW testified that she served CA with a Notice to End Tenancy for Unpaid Rent on April 2, 2014, by posting the Notice on the CA's door.

CW stated that CA was behind in rent because she has not paid the rent increase that was effective April 1, 2013. CW testified that the notice of rent increase was posted to CA's door on December 11, 2012. CW stated that currently, the Tenant owes \$182.64 to the Landlord in unpaid rent. She testified that the Landlord has been issuing receipts for "use and occupancy only".

CA testified that the Landlord put notices to end the tenancy on her door for January, February, March, April, May and June, 2014. She stated that the notices were for unpaid rent, but that she had not received a Notice of Rent Increase from the Landlord. The Tenant testified that her rent is paid directly to the Landlord by the Ministry and that the Ministry requires a copy of any Notice of Rent Increase in order to pay the Landlord the correct amount.

The Tenant did not understand why her neighbour would remove all notices and other papers from her door, except notices to end the tenancy.

CW stated that she could not serve CA in any other way because CA was not home when she knocked on her door, and would not return CW's telephone calls.

It is important to note that CA's application is to cancel a notice to end tenancy that was issued in May, 2014, while the Landlord's application is for an Order of Possession based on the Notice to End Tenancy that was issued on April 2, 2014.

Analysis

During her testimony, the Tenant agreed that she has received notices to end tenancy from the Landlord for every month from January to and including June, 2014, and in particular the Notice to End Tenancy issued April 2, 2014.

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice of Rent Increase on December 11, 2012, and that the amount of rent currently owed is \$182.64.

Based on the above, the testimony of both parties and on a balance of probabilities, I find as follows:

I find the Tenant has not paid all the outstanding rent due and did not apply to dispute the Notice to End Tenancy issued April 2, 2014, within 5 days of receipt of the Notice. The Tenant is therefore conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, April 15, 2014.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. However, during the Hearing the Landlord's agent consented that the Landlord would not enforce the Order of Possession if the Tenants **paid \$182.64 forthwith**.

If the Tenant does not pay the Landlord \$182.64 within 10 days of receipt of this Decision, the Landlord may enforce the Order of Possession and the Tenant will have two (2) days to vacate the rental unit.

I further find that if the Tenants do not pay the Landlord by the above time and date, the Landlord has established a total monetary claim of **\$182.64**. Pursuant to the provisions of Section 72 of the Act, I order that the Landlord may deduct \$182.64 from the security deposit held in trust for the Tenant. The balance of the security deposit must be applied in accordance with the provisions of the Act at the end of the tenancy.

The Tenant's application is dismissed without leave to reapply.

Despite the provisions of Section 88 of the Act, further to the provisions of Section 71(2)(a) of the Act, **for the remainder of the tenancy I Order that the Landlord serve the Tenant with documents by either slipping the document under the Tenant's door or by registered mail to the rental unit. The only exception to this Order is an Application for Dispute Resolution, which must be sent to the Tenant by registered mail.**

I make no Order with respect to recovery of the filing fee.

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 Act.

Dated: June 13, 2014

Residential Tenancy Branch

