



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNR, MNSD, OPR

Introduction

This is an application for an Order of Possession based on a Notice to end Tenancy for nonpayment of rent, a request for a Monetary Order for outstanding rent, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

At the beginning of the hearing the applicant stated that he is no longer pursuing a monetary claim for outstanding rent as all rent is now up to date.

The remaining issues therefore are whether or not to issue an Order of Possession and recovery of the filing fee.

Background and Evidence

The applicant testified that:

- The tenant's rent is almost always late and the tenant has received numerous Notices to End Tenancy.

- The July 2014 rent was also late and therefore another 10 day Notice to end Tenancy was served on the tenant.
- The tenant failed to comply with that 10 day Notice to end Tenancy, and failed to pay the outstanding rent within the five day grace period.
- The rent was subsequently accepted for use and occupancy only, and they have continued to accept rent for use and occupancy only to the end of October 2014.
- Therefore as stated previously they no longer require a Monetary Order; however they are still requesting an Order of Possession for October 31, 2014, and recovery of the filing fee.

The respondents testified that:

- They admit that the rent has been late on numerous occasions as the tenant has had some financial difficulties, however the matters have now been resolved and rent will be on time from now on.
- They have even paid the October 2014 rent in advance.
- They are therefore requesting that this tenancy be allowed to continue.

Analysis

Section 46 of the Residential Tenancy Act allows the landlord to end the tenancy with a 10 day notice if the tenant fails to pay the rent.

Further if the tenant pays that outstanding rent within five days of receiving the notice, the notice is void; however if the tenant fails to pay the outstanding rent in full within that five day time frame, the notice is not void and fully enforceable.

In this case the tenant did not pay the outstanding rent within the five day grace period and therefore the Notice to end Tenancy is still a valid notice.

Therefore, since any rent paid after the notice was given has been accepted for use and occupancy only, the tenancy has not been reinstated, and this tenancy ends pursuant to the Notice to end Tenancy.

The landlord has agreed to allow the tenancy to continue until October 31, 2014, since rent has been paid to that date anyway, and therefore I will be issuing Order of Possession to the landlord for October 31, 2014.

I also allow the landlord's request for recovery of the \$50.00 filing fee

Conclusion

I have issued an Order of Possession for 1:00 PM on October 31, 2014.

I further order that the landlord may deduct \$50.00 from the tenants security deposit held, to cover the cost of the filing fee.

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: September 29, 2014

Residential Tenancy Branch

