



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord's agent, J.Z., appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

J.Z. testified she served the Tenant with the Notice of Hearing and their Application on September 26, 2014 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 1, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a Monetary Order?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began August 15, 2014. Monthly rent was payable in the amount of \$830.00 per month payable on the first of the month. A security deposit in the amount of \$415.00 was paid on August 18, 2014.

The Tenant failed to pay rent for the month of August 2014 in the amount of \$455.16. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 3, 2014 by posting to the rental unit door (the "Notice").

Based on the testimony of J.Z, I find that the Tenant was served with the Notice on September 3, 2014 by posting to the door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of September 8, 2014 (as September 6 falls on a weekend).

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, September 13, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

J.Z. testified that the Tenant paid \$830.00 for September 2014, \$855.00 for October 2014 and \$800.00 for November 2014 leaving \$5.00 owing for November 2014.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and 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. However, the Landlord did not seek an Order of Possession.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of \$510.00 comprised of \$455.16 for August 2014, \$5.00 for November 2014 and the \$50.00 fee paid by the Landlord for this application.

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

Conclusion

The Landlord is granted a monetary order for \$510.16.

This decision is final and binding on the parties, except as 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: November 12, 2014

Residential Tenancy Branch

