



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 OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail to each tenant on October 22, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this tenancy started on December 01, 2012 for a fixed term of one year. The tenancy reverted to a month to month tenancy on December 01, 2013. Rent for this unit started at \$1,100.00 per month and was increased to \$1,141.80 per month on December 01, 2013. Rent is due on the 1st of each month in advance. The tenants also pay \$50.00 per month for parking and utilities each month. The tenants' paid a security deposit of \$550.00 at the start of the tenancy.

The landlord testified that the tenants failed to pay rent for October on the day it was due and a 10 Day Notice to End Tenancy for unpaid rent and utilities was served upon the tenants on October 02, 2014 by posting the Notice to the tenants' door. This Notice informed the tenants that there was outstanding rent of \$1,216.67. This included the parking fee for October. The Notice also informed the tenants that there were outstanding utilities of \$93.17. The tenants had five days to pay the outstanding rent and utilities or file an application to dispute the Notice or the tenancy would end on October 15, 2014.

The landlord testified that the tenants paid the outstanding rent and parking on October 17, 2014 and the outstanding utilities on November 03, 2014. The tenants have also paid rent for November, 2014 and to date there are no amounts outstanding. The landlord testified that the amounts paid by the tenants after the 10 Day Notice was served were accepted for use and occupancy only and the landlord does not intend to reinstate the tenancy.

The landlord testified that as the tenants did not pay the outstanding rent and utilities within the five allowable days as indicated on the 10 Day Notice the landlord seeks an Order of Possession effective November 30, 2014. The landlord also seeks to recover the \$50.00 filing fee and withdraws their claim for a Monetary Order for unpaid rent and utilities.

Analysis

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent and utilities, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting on October 05, 2014. The effective date of the Notice is therefore amended to

October 15, 2014 pursuant to s. 53 of the *Act*. The tenants did pay the outstanding rent and utilities on October 17 and November 03, 2014; however, these amounts were not paid within the five allowable days pursuant to s. 46 (4)(a) of the *Act*. Furthermore, the tenants did not file an application to dispute the 10 Day Notice in accordance with s. 46(4)(b) of the *Act*. I am satisfied that the landlord notified the tenants that the money paid since the 10 Day Notice was served was accepted for use and occupancy only and did not reinstate the tenancy.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession as requested pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective by **1.00 p.m. on November 30, 2014**. This order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$550.00 leaving a balance \$500.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

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: November 06, 2014

Residential Tenancy Branch

