



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on October 23, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was 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's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord's agent testified that this fixed term tenancy started on September 01, 2014 and was due to end on August 31, 2015. Rent for this unit is \$605.00 per month due on the 1st of each month. The tenant paid a security deposit of \$302.50 on April 27, 2014

The landlord's agent testified that the tenant failed to pay the rent on October 01, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on October 09, 2014. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent of \$605.00 or apply for Dispute Resolution or the tenancy would end on October 19, 2014. The tenant did not pay the outstanding rent or file an application to dispute the Notice. The landlord's agent testified that the landlord had claimed to recover a loss of rent for November and December, 2014; however, the tenant has since paid rent for these months and the landlord informed the tenant that this was accepted for use and occupancy only and does not reinstate the tenancy. The landlord therefore amended their claim to cover the loss of rent for October only.

The landlord has applied to retain the tenant's security deposit of \$302.50 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on December 31, 2014.

Analysis

I have carefully considered all the evidence before me, and refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that there is outstanding rent for October, 2014 of \$605.00. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$302.50 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$605.00
Filing fee	\$50.00
Less security deposit	(-\$302.50)
Total amount due to the landlord	\$352.50

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on October 12, 2014. The effective date of the Notice is amended to October 22, 2014 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is 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 and the landlord has agreed the tenant can

remain in the rental unit until December 31, 2014 I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$352.50** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord on December 31, 2014. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court.

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: December 02, 2014

Residential Tenancy Branch

