



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 opr, mnr, mnsd, ff

Introduction

The landlord applies for dispute resolution and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenant was properly served with the Application for Dispute resolution hearing package by way of registered mail.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rental money payable to the landlord?
- Has the tenancy been reinstated?
- Is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on January 1, 2010. Rent is due on the 1st day of each month in the amount of \$1,206.58. A security deposit of \$520.00 was paid at the start of the tenancy. The landlord served the tenant with a 10-Day Notice to End Tenancy by posting it on the door on January 2, 2015, after not receiving rent for the month of January. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. The January rent was subsequently paid on January 21, 2015, together with a late fee payment as required under the tenancy agreement, and was accepted by the landlord on a use and occupation basis, as referenced on the receipt given to the tenant. No rent for February has been paid.

Analysis

I accept that the January payment was accepted by the landlord on a use and occupation basis, and not as a reinstatement of the tenancy. In the absence of the required rental payment, or a dispute of the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act, as extended by virtue of the use and possession agreement. The landlord has established a right to possession. The landlord also seeks an order for loss of rental income for February, which the landlord submits was discussed with the

tenant recently, and requests that the Order of Possession be made effective for 1:00 pm, February 27, 2015. I note that the landlord's claim is for "unpaid rent", and I accept that the tenant should be aware that since he remains in possession into February, that it is appropriate that the landlord's claim be amended to include the claim for February's loss of rental income. The landlord is entitled to recover the loss of rent for February, a late fee, and the filing fee from the tenant, which total \$1,281.58. The landlord may also retain the security deposit in partial satisfaction of the award, should it not be paid by the tenant.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective at 1:00 pm on the 27th day of February, 2015. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$1,281.58. The security deposit including accrued interest to the date of this hearing, totals \$520.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$761.58, be paid immediately.

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: February 04, 2015

Residential Tenancy Branch

