



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

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee from the Tenant.

Preliminary Issues

The property manager of the rental unit (the "Landlord") appeared for the hearing and provided affirmed testimony and explained that she was an agent for the Landlord. There was no appearance for the Tenant during the 18 minute duration of the hearing. As a result, I turned my mind to the service of the documents for this hearing.

The Landlord testified that she served a copy of the Application and the Notice of Hearing documents by registered mail to the rental unit on May 25, 2015, pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided the Canada Post tracking number and receipt as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on May 30, 2015 pursuant to the Act.

The Landlord had only provided a copy of the second notice to end tenancy into written evidence but had forgotten to provide a copy of the first notice to end tenancy. As a result, I allowed the Landlord, under Rule 3.17 of the Rules of Procedure, to provide a faxed copy of the first notice to end tenancy into written evidence after the conclusion of the hearing.

The Landlord also requested to amend her Application to increase her monetary claim for June 2015 rent and related charges which had also not been paid by the Tenant since the time the Application was made. As the Tenant would have been aware of these outstanding charges, I allowed the Landlord to amend the Application for the increased amount to be considered in this hearing from \$1,037.11 to \$2,074.00.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for May and June 2015?
- Is the Landlord entitled to car parking charges, late rent fees, and charges imposed by the Landlord's bank?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on August 1, 2010 for a fixed term of 12 months which then continued on a month to month basis thereafter. The Tenant paid the Landlord a security deposit of \$425.00 at the start of the tenancy which the Landlord still retains.

The current amount of rent payable in this tenancy is \$962.11 on the first day of each month. The Tenant is also required to pay \$25.00 each month for a car parking space provided to him for this tenancy. The Landlord provided a "Statement of Account" document which shows previous rent payments made by the Tenant on the first day of each month including transactions for \$25.00 relating to the car parking space.

The Landlord testified that the Tenant's rent cheque for May 2015 bounced. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "First Notice") on May 6, 2015 by attaching it to the Tenant's door.

The First Notice which was provided into written evidence after the hearing shows an expected date of vacancy of May 19, 2015 due to \$987.11 for unpaid rent and \$25.00 for the parking space, both due on May 1, 2015.

The Landlord testified that she contacted the Tenant who stated that he did not have the money to pay rent and apologized to her. The Landlord testified that that the Tenant's rent cheque for June 2015 also bounced.

As a result, the Landlord served the Tenant with a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Second Notice") on June 4, 2015 by attaching it to the Tenant's door. The Notice was provided into written evidence and shows an expected date of vacancy of June 16, 2015 due to \$2,074.00 due on June 1, 2015.

The Landlord explained that the amount on the Second Notice and the amended amount of her Application comprises of: two months' rent (\$962.11 x 2); two months of late rent fees (\$25.00 x 2); two months of car parking charges (\$25.00 x 2) and fees charged by the Landlord's bank for returned cheques (25.00 x 2). As a result, the Landlord now seeks an Order of Possession and a Monetary Order in the amount of \$2,074.22.

The Landlord confirmed that payment of a late rent fee was not included in the tenancy agreement and the Landlord had not supplied documentary evidence of the charges imposed by the bank for the returned rent cheques.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the copy of the First and Second Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that both Notices were served to the Tenant by attaching them to the rental unit door.

There is no evidence before me that the Tenant paid the outstanding rent related to each notice to end tenancy and did not make an Application to dispute either one within the stipulated times limits. As a result, I find the Tenant is conclusively presumed to

have accepted the tenancy ended on the vacancy date of the notices to end tenancy. As the vacancy dates on the First and Second Notice have now passed, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's oral and written evidence that the Tenants had failed to pay rent for May and June, 2015. Accordingly I award the Landlord **\$1,924.22** in unpaid rent.

I also accept the Landlord's oral and written evidence from the "Statement of Account" document that the Tenant was required to pay \$25.00 for the use of a car parking space each month which is also unpaid. Therefore, I find the Landlord is entitled to **\$50.00** in unpaid car parking charges.

In relation to the Landlord's claim for late rent fees, Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late payment of rent **which is documented in a tenancy agreement**. As there are no provisions in this tenancy agreement for a late rent fee, I deny this portion of the Landlord's monetary claim.

The *Residential Tenancy Regulation* does allow a landlord to charge a fee imposed by a financial institution for the return of a tenant's cheque. However, the Landlord provided no documentary evidence indicating the actual charge levied by the bank to the Landlord for the Tenant's returned cheque. In the absence of such vital evidence, I am not prepared to award this portion of the Landlord's monetary claim.

As the Landlord has been successful in the majority of the claim, I also award the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$2,024.22** (\$1,924.22 + \$50.00 + \$50.00).

As the Landlord holds the Tenant's security deposit of \$425.00, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$1,599.22**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by failing to pay rent and car parking charges under this tenancy. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$1,599.22.

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: June 23, 2015

Residential Tenancy Branch

