



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, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he individually served each of the Tenants with the Notice of Hearing and their Application on May 4, 2015 by registered mail. Introduced in evidence were copies of the registered mail receipts and tracking numbers. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of May 9, 2015.

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 an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating the tenancy began on April 1, 2015 for a 1 year fixed term, ending on March 31, 2015.

Monthly rent was initially payable in the amount of \$1,135.00 and the Tenants paid a security deposit in the amount of \$567.50. Following the expiration of the fixed term, the tenancy continued on a month to month basis and at the time of the hearing, monthly rent was \$1,163.37.

Pursuant to clause 10, the parties agreed that the Tenant would also pay a \$25.00 administration fee.

The Tenants failed to pay the full amount of rent owing for March 2015 such that \$110.00 was owing. The Tenants also failed to pay rent for April 2015.

The Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 7, 2105. The Landlord testified that the Notice was posted to the rental unit door on April 7, 2015. Pursuant to section 9 of the *Act*, documents served in this manner are deemed served three days later; namely, April 10, 2015.

Introduced in evidence was a tenant ledger indicating that as of April 5, 2015, the Tenants owed \$1348.37.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, April 15, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants did not pay the outstanding rent, nor did they make an application for dispute resolution.

The Landlord testified that the Tenants also failed to pay rent for May 2015 and June 2015. At the time of the hearing the Landlord sought a Monetary Order for \$3,750.11 comprised of the following:

March 2015 rent	\$110.00
March administration fee	\$25.00
April 2015 rent	\$1,163.37
April administration fee	\$25.00
May 2015 rent	\$1,163.37
May administration fee	\$25.00
June 2015 rent	\$1,163.37
June administration fee	\$25.00

Filing fee	\$50.00
TOTAL CLAIMED	\$3,750.11

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$3,750.11 comprised of outstanding rent for March, April, May and June 2015, the monthly administration fee of \$25.00 for each of those months and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$567.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,182.61**.

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

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

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: June 17, 2015

Residential Tenancy Branch

