



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 as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Landlord's Application and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. The Landlord testified that the Application Materials were served on the Tenant by registered mail on June 5, 2015. The Landlord provided the tracking number in evidence as well as the receipt for the registered mailing. Pursuant to section 90 of the *Act*, documents served in this manner are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as of June 10, 2015 under the *Act* as a result.

Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenant vacated the rental unit on June 30, 2015, since filing his application. As a result, the Landlord requested to withdraw their request for an Order of possession as the Tenant had already given up possession of the rental unit by vacating the rental unit on June 30, 2015.

Issue to be Decided

Is the Landlord entitled to a Monetary Order under the *Act*, and if so, in what amount?

Background and Evidence

A one year fixed term tenancy agreement between the parties began on or about May 15, 2014 and ended on June 30, 2015 when the Tenant vacated the rental unit. At the time of the hearing, monthly rent in the amount \$910.00 was due on the first day of each month during the tenancy. The Tenant paid a \$455.00 security deposit at the start of the tenancy which the Landlord continues to hold.

Introduced in evidence was a copy of the residential tenancy agreement which provided for a \$25.00 late fee in clause # 10 "Arrears".

The Tenant failed to pay the full amount of rent for the month of May 2015 leaving a \$385.00 balance. The Tenant also failed to pay the \$910.00 in rent for June 2015. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 2, 2015 indicating the amount of \$1,292.75 was due as of *(the "Notice"). The Notice has an effective vacancy date of June 15, 2015.

The Landlord testified that the Notice was served on the Tenant by posting to the rental unit door on June 2, 2015. The Landlord testified that J.T., the former site administrator attended to posting the Notice to the door. Section 90 of the *Act* provides that documents served in this way are deemed served three days later, namely June 5, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, June 10, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant did not pay the rent within the five days as prescribed by the *Act*, nor did the Tenant apply for dispute resolution.

Introduced in evidence was a letter from the Tenant to the Landlord dated May 21, 2015 wherein the Tenant confirmed he would be moving from the rental unit on June 30, 2015. He also wrote that he was agreeable to the Landlord retaining the security deposit and applying it to the June 2015 rent.

The Landlord is seeking a monetary Order in the amount of \$* comprised of the following:

Unpaid rent for May 2015	\$385.00
Unpaid rent for June 2015	\$910.00
Filing fee	\$50.00
TOTAL MONETARY CLAIM	\$1,345.00

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

Pursuant to section 26 of the *Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find the Tenant breached section 26 of the *Act* by failing to pay \$1,295.00 in rent as claimed by the Landlord. As the Landlord's application had merit, I grant the Landlord the recovery of the \$50.00 filing fee.

I find that the Landlord has established a total monetary claim of \$1,345.00 comprised of the following:

Unpaid rent for May 2015	\$385.00
Unpaid rent for June 2015	\$910.00
Filing fee	\$50.00
TOTAL AMOUNT AWARDED	\$1,345.00

I note that the Tenant agreed that the Landlord may retain the security deposit; accordingly, pursuant to sections 38(4)(a) and 72(2)(b) of the *Act* I find this claim meets the criteria to be offset against the Tenant's security deposit, which the Landlord continues to hold, in the amount of \$455.00, which has accrued \$0.00 in interest to date. I authorize the Landlord to retain the Tenant's full security deposit of \$455.00 in partial satisfaction of the Landlord's monetary claim, and I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the balance owing by the Tenant to the Landlord in the amount of **\$890.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

Although the Landlord provided evidence regarding a late fee for May 2015, he did not make any submissions in this regard, or request monetary compensation for this

amount. Accordingly, I make no order with respect to the late fee which may be payable to the Landlord by the Tenant. The Landlord also indicated that he had a carpet cleaning charge, as well as other incidental expenses which he incurred when the tenancy ended. As those were not claimed on the Landlord's Application, I grant him leave to apply for a further Monetary Order should he wish to pursue reimbursement of these amounts pursuant to section 67 of the *Act*.

Conclusion

I find that the Landlord has established a total monetary claim of \$1,295.00 as indicated above. I authorize the Landlord to retain the Tenant's full security deposit of \$455.00 in partial satisfaction of the claim, and I grant the Landlord a monetary Order under section 67 for the balance due of **\$890.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

This decision is final and binding on the parties, unless 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: July 22, 2015

Residential Tenancy Branch

