



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 OPC MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent or utilities, for an order of possession based on cause, for a monetary order for unpaid rent or utilities, to retain all or a portion of the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) attended the teleconference hearing and gave affirmed testimony. The agent was given the opportunity to ask questions about the hearing process. During the hearing the agent 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 matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”), and documentary evidence were considered. The agent testified under oath that the tenant was served the Notice of Hearing, Application and documentary evidence by registered mail on June 18, 2015 to the tenant’s rental unit where the tenant was residing until July 1, 2015 before vacating the rental unit. The landlord submitted a photocopy of the registered mail receipt with tracking number. According to the Canada Post registered mail tracking website, the package was successfully signed for accepted by the tenant on June 22, 2015. Given the above, I find the tenant was deemed served with the Notice of Hearing, Application and documentary evidence as of June 22, 2015, the day the tenant signed for an accepted the registered mail package.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested to reduce the landlord’s monetary claim from \$1,320.30 in unpaid rent, parking, locker and late fees to \$670.15 comprised of \$565.15 in unpaid June 2015 rent, plus \$40 for the June 2015 parking fee, \$40 for the June 2015 locker fee, and \$25 for a late fee for June 2015. I find that a reduction of the landlord’s monetary claim does not prejudice the tenant. Accordingly, I permit the reduction of the landlord’s monetary claim pursuant to section 64(3) of the *Act* to \$670.15 as described above.

In addition to the above, the agent requested to withdraw the landlord's request for an order of possession as the agent stated that the tenant vacated the rental unit on July 1, 2015 and as a result, the landlord already has possession of the rental unit. Given the above, I have not considered the landlord's request for an order of possession based on cause or an order of possession based on unpaid rent or utilities.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

A fixed term tenancy agreement began on May 1, 2013 and reverted to a month to month tenancy after April 30, 2014. A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$1,160 was due on the first day of each month at the start of the tenancy and was increased via two rent increases in accordance with the *Act*. The first rent increase was effective May 1, 2014 in the amount of \$25.52 for a new rent amount of \$1,185.52, and the second rent increase was effective May 1, 2015 in the amount of \$29.63 for a total new monthly rent amount of \$1,215.15. A copy of the 2015 rent increase form was submitted in evidence.

The agent testified that the tenant paid a \$580 security deposit at the start of the tenancy, which the landlord continues to hold.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated June 4, 2015 was posted to the tenant's door on June 4, 2015 between 2:00 p.m. and 3:00 p.m. A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice indicates that \$1,295.30 was due as of June 1, 2015 and had an effective vacancy date of June 17, 2015. The agent stated that the tenant did pay \$650 on June 22, 2015, well after the 5 day timeline to pay the full amount listed on the 10 Day Notice. The agent stated that the tenant did not dispute the 10 Day Notice and vacated the rental unit on July 1, 2015.

Section 10 of the tenancy agreement indicates that late payments of rent will be subject to a \$25 late fee. In addition, the agent referred to a parking addendum to the tenancy agreement which indicates that \$40 per month for parking will be paid by the tenant. Also, the agent referred to a locker addendum to the tenancy agreement, which indicates that \$40 per month for the use of a storage locker will be paid by the tenant. The parking addendum and storage locker addendum were submitted in evidence.

The agent stated that the landlord is seeking \$670.15 as follows:

1. Unpaid portion of June 2015 rent	\$565.15
2. Late fee for June 2015	\$25
3. Parking fee for June 2015	\$40
4. Storage locker fee for June 2015	\$40
TOTAL	\$670.15

A copy of the tenant's account ledger was submitted in evidence.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent – Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the agent's undisputed testimony that the tenant failed to pay the \$565.15 portion of June 2015 rent. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I note that the ledger is dated June 18, 2015 and accept the agent's testimony that the tenant paid \$650 of the \$1,215.15 rent for June 2015 on June 22, 2015, resulting in a balance owing of \$565.15 for June 2015 rent. Given the above, I find the landlord has met the burden of proof by establishing that the tenant has failed to pay \$565.15 in rent for June 2015. Based on the above, I grant the landlord a total of **\$565.15** in unpaid rent for the month of June 2015.

Late fee, parking fee and storage locker fee – In reviewing section 10 of the tenancy agreement, I find the landlord has established a claim for the late fee of \$25 as claimed for June 2015. Therefore, I grant the landlord **\$25** for the late fee for June 2015. I have also reviewed the parking addendum and the storage locker addendum/agreement and find that the tenant agreed to pay \$40 for parking and \$40 for a storage locker each month. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$40** for the June 2015 parking fee, and **\$40** for the June 2015 storage locker fee.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50** filing fee.

I find the landlord has met the burden of proof and I find the landlord has established a total monetary claim of **\$720.15** comprised of \$565.15 in unpaid rent, a \$25 late fee, a \$40 parking fee, and a \$40 storage locker fee, plus recovery of the \$50 filing fee.

The tenant's security deposit of \$580 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

I ORDER the landlord to retain the tenant's full security deposit of \$580 in partial satisfaction of the landlord's monetary claim. 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 **\$140.15**.

Conclusion

The landlord's application is successful.

The landlord has been ordered to retain the tenant's full security deposit of \$580 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$140.15. 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: August 14, 2015

Residential Tenancy Branch

