



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 was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act), orally amended in the hearing, for Orders as follows:

1. An Order of Possession - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided the tracking information for the registered mail indicating it was sent on September 22, 2015 and ultimately unclaimed by the tenant and returned to the landlord. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 01, 2014. Rent in the amount of \$1742.50 is currently payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$850.00.

The tenant failed to pay rent when due in the month of September 2015 and on September 04, 2015 the landlord served the tenant with a notice to end tenancy for non-

payment of rent by posting it to the tenant's door; deemed to have received the notice September 07, 2015. The Notice contained an effective date of September 19, 2015. The tenant did not dispute the notice to end, however made payments toward the arrears within the 5 days following before September 12, 2015. The tenant then satisfied all of rent for September 2105 on September 16, 2015.

The landlord claims they accepted rent from November 12 to 16, 2015 for *Use and Occupancy Only* and claims to have communicated it to the tenant, but did not provide document evidence they did so.

The landlord testified the tenant satisfied all rent for October 2015 and in the month of November 2015 currently still owes a portion for rent and the landlord has given the tenant another notice to end.

Analysis

Based on the landlord's evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

The tenant is deemed to have received the Notice September 07, 2015 – with an effective date of November 17, 2015, although the landlord allowed the effective date as September 19, 2015. The tenant did not apply for Dispute Resolution to dispute the notice nor did they pay all the rent owed within the 5 days prescribed to do so, however satisfied all rent before the 10 day Notice to End became effective. I have no proof from the landlord that they accepted the owed rent for *Use and Occupancy Only* and must therefore conclude the tenant may not be aware the landlord accepted all rent without intention of re-instating the tenancy.

As a result of the above, I find the landlord accepted all rent before the effective date of the Notice to End and in the absence of proof to the contrary find the landlord re-instated the tenancy and is therefore not entitled to an Order of Possession. .

I have not been presented evidence in respect to October and November 2015. If the landlord has proof to support ending the tenancy on a basis other than the facts in this matter it remains available to the landlord to re-apply.

Conclusion

The landlord's application **is dismissed**. The tenancy continues. If necessary, the landlord is at liberty to issue a new Notice to End.

This Decision is final and binding on both parties.

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: November 23, 2015

Residential Tenancy Branch

