



Dispute Resolution Services

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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord's agent, ES ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the site manager for the landlord company named in this application and that he had authority to speak on its behalf as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on September 28, 2015, by way of registered mail to the rental unit. The landlord provided a Canada Post receipt and tracking number with its Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on October 3, 2015, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated September 4, 2015 ("10 Day Notice"), by way of posting to her rental unit door. In accordance with sections 88 and 90 of the Act, I find

that the tenant was deemed served with the landlord's 10 Day Notice on September 7, 2015, three days after its posting.

Preliminary Issue – Amendment of Landlord's Application

During the hearing, the landlord requested an amendment to the landlord's Application, to reduce the monetary claim sought from \$217.15 to \$25.00. The landlord initially applied for a monetary order of \$217.15 for unpaid September 2015 rent. The landlord claimed that September 2015 rent had been paid in full, along with October and November 2015 rent. The landlord stated that the only unpaid amount was a \$25.00 late fee for November 2015 rent.

In accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to reduce the monetary claim to \$25.00 to account for a November 2015 late rent fee. I find that the tenant is not prejudiced by this amendment, as it is a reduction in the monetary amount and I find that the tenant had reasonable notice that the landlord would seek this amount from her. This late fee is indicated on the tenancy agreement that the tenant signed. I find that although this amount arose after the landlord filed its Application, the tenant had notice that this amount would have become due after paying rent late on November 4, 2015. The landlord also provided a rent ledger with its Application evidence, indicating that late rent fees of \$25.00 each were being charged to the tenant for late rent paid during the tenancy. Further, the landlord's Application originally sought unpaid September 2015 rent including a late rent fee of \$25.00.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that this tenancy began on August 1, 2011. Monthly rent in the current amount of \$1,202.15, plus an additional \$40.00 for a storage locker, is payable on the first day of each month. The landlord provided copies of all notices of rent increase for this tenancy, after the hearing, at my request. A security deposit of \$530.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit, as the landlord saw her the week before this hearing. A written tenancy agreement was provided for this hearing.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,242.15 was due on September 1, 2015. The landlord crossed out the original amount of rent due, which was \$4,517.81, and wrote in the above amount, initialling beside these changes. The notice indicates an effective move-out date of September 19, 2015. The landlord stated that the tenant owed \$1,242.15 for rent including the storage locker fee, and that the larger amount indicated was due to the landlord's computer error. The landlord confirmed that the tenant paid \$1,050.00 towards rent on September 1, 2015, so the only outstanding amount was \$217.15 for rent, the storage locker fee, and the late rent fee. The landlord claimed that he made an error by not including the \$217.15 on the 10 Day Notice, which he said was the correct amount due.

The landlord provided a rent ledger for this hearing. The landlord stated that the tenant made partial payments towards the \$217.15 amount due for September 2015 by paying \$192.15 on September 30, 2015 and \$25.00 on October 19, 2015. The landlord claimed that "use and occupancy only" receipts were issued to the tenant for these rent payments. The landlord provided copies of these rent receipts after the hearing, at my request. The landlord stated that October 2015 rent was paid in full but he did not indicate the date the payment was made and he did not provide a rent receipt for this payment after the hearing. The landlord testified that the tenant paid \$1,242.15 on November 4, 2015 and she was issued a "use and occupancy only" receipt. The landlord provided a copy of this rent receipt after the hearing, at my request. The landlord stated that a \$25.00 late fee is still unpaid for November 2015 and the landlord seeks this amount from the tenant.

Analysis

Section 46(1) of the *Act* states that the landlord may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlord may only issue a 10 Day Notice for valid reasons.

I find that the total amount indicated by the landlord on the 10 Day Notice of \$1,242.15 was incorrect, as the tenant made a rent payment of \$1,050.00 on September 1, 2015.

The landlord stated that the remaining balance was \$217.15 owed by the tenant and that he mistakenly did not include this amount on the notice. However, I find that the only amount of rent owing was \$152.15, as the late fee of \$25.00 is not rent and would become due after September 1, 2015 when the rent would be late, and the \$40.00 storage locker fee is not rent, even if it is due during the same time as rent. Therefore, as of September 1, 2015, the unpaid rent owing was \$152.15 and this would have been the correct amount for the landlord to indicate on the 10 Day Notice, which it failed to do. I find that by issuing a notice indicating two incorrect amounts of \$4,517.81 and \$1,242.15 on the same notice, the tenant was not provided with proper notice of the correct amount of rent due. Even if the tenant had a copy of the landlord's rent ledger, this ledger only indicated \$217.15 due after September 1, 2015 and this amount is incorrect. For the above reasons, I find that the landlord issued an invalid 10 Day Notice to the tenant.

Therefore, the tenant did not have proper notice of the correct amount of rent due, such that she could pay the correct amount owed to the landlord or file an application to dispute the actual amount owing, within five days of deemed receipt. Accordingly, I find that the landlord's 10 Day Notice, dated September 4, 2015, is invalid. The landlord's 10 Day Notice, dated September 4, 2015, is cancelled and of no force or effect. The landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, dated September 4, 2015, is dismissed without leave to reapply.

The landlord seeks a monetary order of \$25.00 for a November 2015 late rent fee. The tenant was late paying November 2015 rent, as indicated by the landlord's testimony and the "use and occupancy only" rent receipt provided by the landlord showing that rent was paid on November 4, 2015. This amount is indicated on the tenancy agreement and explained as a "late rent payment fee." In accordance with sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*, which states that the landlord may only charge a maximum of \$25.00 for a late rent payment fee and it must be indicated on the tenancy agreement, I award \$25.00 to the landlord for the November 2015 late rent fee.

As the landlord was partially unsuccessful in this hearing, I find that the landlord is not entitled to recover the \$50.00 filing fee paid for this Application from the tenant. The landlord must bear the cost of the filing fee.

Conclusion

The landlords' application for an order of possession for unpaid rent based on the 10 Day Notice, dated September 4, 2015, is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated September 4, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to retain \$25.00 from the tenant's security deposit in full satisfaction of the monetary award. The remainder of the tenant's security deposit, totalling \$505.00, is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The landlord's application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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 24, 2015

Residential Tenancy Branch