



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on October 22, 2015. The Landlord filed seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on October 26, 2015.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served notice of this hearing on October 31, 2015, in accordance with Sections 89(1)(c) and 90 of the *Act*. The hearing continued to hear the undisputed evidence of the Landlord.

On October 29, 2015 the Landlord submitted 24 pages of evidence to the Residential Tenancy Branch. The Landlord testified that the Tenant was served copies of that evidence with their hearing documents. Therefore, I accepted the Landlord's documents as evidence for matter.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term tenancy that began on November 1, 2014 and switched to a month to month tenancy after November 30, 2014.

Rent of \$876.00 was due on or before the first of each month. Rent was subsidized by \$575.00 per month which required the Tenant to pay the balance of \$301.00 each month. No security deposit was required to be paid.

The Landlord testified that when the Tenant's pre authorized payment for October 1, 2015 failed to clear the bank the Landlord posted a 10 Day Notice to the Tenant's door on October 7, 2015. Four reminder letters were posted to the Tenant's door on the following dates: October 5, 8, 19, and 22, 2015.

The Landlord testified that the Tenant's support worker called her on approximately November 13, 2015 and told her that the Tenant was not in town. The Landlord stated that she informed the support worker of their application and this hearing. She said she agreed that if payment was received in full for October, November and December 2015 prior to this hearing, the Landlord would reinstate the tenancy.

The Landlord stated that only one pre-authorized payment (December's payment) has cleared the bank for the last three months, leaving a balance owed of \$602.00. Therefore, the Landlord wished to proceed with their application for the Order of Possession and the Monetary Order for the two months outstanding as they filed on October 22, 2015 and their application was not scheduled to be heard until December 21, 2015.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on October 10, 2015, three days after it was posted to the door. Therefore, the effective date of the Notice was **October 20, 2015**.

The Tenant neither paid the rent in full nor disputed the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **October 20, 2015**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Section 26 of the *Act* stipulates in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed unpaid rent of \$301.00 that was due October 1, 2015, in accordance with section 26 of the *Act*. The Landlord submitted evidence that one pre-authorized payment cleared the bank on December 1, 2015. Therefore, based on the Generally Accepted Accounting Principles, that payment would be applied to the outstanding amount owed for October 1, 2015. Accordingly, I find October 1, 2015 rent to be paid in full.

As noted above this tenancy ended **October 20, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent

for November and December 2015. I accept the Landlord's request to consider payment for these months given that their hearing was not scheduled for two months after they filed their application.

In addition, I've considered that the Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of November and December 2015, in the amount of **\$602.00** (2 x \$301.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been successful with their application and has been granted an Order of Possession and a Monetary Order for \$652.00 (\$602.00 + \$50.00).

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order for **\$652.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: December 21, 2015

Residential Tenancy Branch

