



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

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent issued under s. 46 of the *Residential Tenancy Act* (the “RTA”) and for a monetary order for unpaid October 2015 rent.

At hearing it was agreed that November and December rent money had not been paid and that the landlord’s application be amended to include a claim for November and December unpaid rent or loss of rental income.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenancy ended as a result of the ten day Notice? What, if anything, does the tenant owe the landlord for unpaid rent?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in August 2014 and is presently a month to month tenancy at a rent of \$1394.00, due on the first of each month. The landlord’s representative Ms. S.G. acknowledges that the landlord holds a \$680.00 security deposit and a \$680.00 pet damage deposit.

It is agreed that the tenant did not pay the October rent on time. The landlord issued the Notice and the tenancy received it on October 6, 2015.

The tenant has suffered significant health issues preventing him from paying the rent. On October 13, seven days after the Notice, he paid the landlord \$1100.00. Three days later he paid another \$410.00. He has paid nothing since.

At hearing the landlord acknowledged the October rent was paid in full.

Analysis

Section 46 of the *RTA* states that once a tenant receives a ten day Notice for unpaid rent, the tenant has five days to either apply to cancel the Notice or pay the amount demanded in it. If a tenant fails to do either of those two things within that five day period, he is “conclusively deemed” to have accepted the end of the tenancy on the effective date of the Notice.

The *RTA* has no provision for an arbitrator to grant equitable relief to a tenant who has suffered extraordinary circumstances.

The tenant failed to pay the amount demanded or apply to cancel the Notice within the five day period. As a result, this tenancy ended on October 17, 2015 and the landlord is entitled to an order of possession.

I award the landlord \$2788.00 for loss of rental income from the months November and December 2015, plus recovery of the \$50.00 filing fee. The landlord's application does not request that it keep the deposit monies in reduction of any award and so I refrain from making any offset of the deposit monies against the amount awarded here. The deposit monies remain the tenant's money, to be accounted for in the ordinary course as per the *RTA*.

Conclusion

The landlord will have an order of possession and a monetary award totalling \$2838.00.

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 31, 2015

Residential Tenancy Branch

