



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, 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 tenants' 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 tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 33 minutes. The landlord's agent, AL ("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 she was the operations manager for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlord's original application for dispute resolution hearing package on December 12, 2015, by way of registered mail to the rental unit. The landlord provided two Canada Post receipts and tracking numbers with its Application. The landlord testified that the tenants were each served with a separate copy of the landlord's amended application for dispute resolution hearing package on January 15, 2016, by way of registered mail to the rental unit. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's original application on December 17, 2015 and amended application on January 20, 2016, five days after each of their registered mailings.

Preliminary Issue – Order of Possession

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 6, 2015 ("10 Day Notice"), by way of posting to their rental unit door probably on November 6, 2015. The landlord could not confirm the exact date, stating that because the 10 Day Notice was dated for November 6, 2015, that it was usually the landlord's practice to serve the notice on the same date. The landlord confirmed that she did not personally serve the notice and the person who did, was unavailable to testify during this hearing. As the landlord could not confirm the exact date that the 10 Day Notice was served, I find that the tenants were not properly served with the landlord's 10 Day Notice.

Accordingly, I dismiss the landlord's application for an order of possession based on the 10 Day Notice, dated November 6, 2015, without leave to reapply. The landlord's 10 Day Notice, dated November 6, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in the accordance with the *Act*.

Preliminary Issue – Amendment of Landlord's Application

I deny the landlord's request to amend its application to increase the monetary amount sought from \$696.50 to \$2,715.50. I find that the landlord's amended application was deemed received by the tenants late on January 20, 2016, less than 14 days prior to this hearing, contrary to Rule 4.6 of the Residential Tenancy Branch *Rules of Procedure*. Further, these amounts are not simply for unpaid rent, they also include parking, late and NSF fees. Therefore, I advised the landlord that I could only consider the landlord's original application for a monetary order of \$696.50. The remaining monetary order of \$2,019.00 for December 2015 and January 2016 rent, parking, late and NSF fees are dismissed with leave to reapply.

Issues to be Decided

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

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

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

Background and Evidence

While I have turned my mind to 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 June 23, 2014 for a fixed term ending on June 30, 2015, after which it transitioned to a month-to-month tenancy. Monthly rent in the current amount of \$1,209.50, plus an additional \$20.00 for parking, is payable on the first day of each month. A written tenancy agreement was provided for this hearing, which indicates that monthly rent was \$1,180.00. The landlord did not provide any notices of rent increase with its application, although the landlord testified that the tenants were served with one, in order to raise the rent to its current amount of \$1,209.50. A security deposit of \$590.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit, as the landlord confirmed that a building cleaner saw them recently.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,254.50 was due on November 1, 2015. The notice indicates an effective move-out date of November 19, 2015. The landlord stated that the tenants owed \$1,209.50 for rent plus \$20.00 for parking and \$25.00 for an NSF fee, for a total of \$1,254.50. The landlord provided a rent ledger for this hearing. The landlord stated that the tenants made a partial payment towards rent of \$583.00 on November 26, 2015, bringing the outstanding amount to \$696.50 from the amount of \$1,254.50.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements, on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the total amount indicated by the landlord on the 10 Day Notice of \$1,254.50 was incorrect, as this amount includes parking charges of \$20.00 and an NSF fee of \$25.00, both of which are not considered rent. Further, I find that the landlord failed to

prove that rent of \$1,209.50 was due each month, as the landlord failed to provide a notice of rent increase with its application. I find that the landlord failed to meet the test above. Therefore, I dismiss the landlord's application for a monetary order of \$696.50 with leave to reapply.

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

Conclusion

The landlord's application for an order of possession, based on the 10 Day Notice, dated November 6, 2015, is dismissed without leave to reapply. The landlord's 10 Day Notice, dated November 6, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application for a monetary order of \$696.50 for November 2015 rent, parking, late and NSF fees, is dismissed with leave to reapply.

The landlord's application for a monetary order of \$2,019.00 for December 2015 and January 2016 rent, parking, late and NSF fees, is dismissed with leave to reapply.

As no monetary order was issued at this hearing, the landlord's application to retain the tenants' security deposit is dismissed with 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: February 01, 2016

Residential Tenancy Branch

