



Dispute Resolution Services

Page: 1

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, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 29, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on February 03, 2016 were sent to each Respondent (Tenant), via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to each Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on April 01, 2011;
- at the end of the tenancy the Tenants were required to pay monthly rent of \$1,140.82 by the first day of each month;
- the Tenants paid a security deposit of \$525.00;
- the Tenants did not pay any rent for January until January 31, 2016, at which time the Tenants paid \$300.00;
- the Tenants did not pay any rent for February until February 01, 2016, at which time the Tenants paid \$463.20;

- the Tenants paid an additional \$500.00 in rent on February 15, 2016;
- the Landlord issued a receipt for “use and occupancy” for each of the three aforementioned payments; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 18, 2016, was posted on the door of the rental unit on January 05, 2016.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,140.82 by the first day of each month during the latter portion of the tenancy.

On the basis of the undisputed evidence I find that the Tenant did not pay the rent when it was due on January 01, 2016; that they paid \$300.00 of that rent on January 18, 2016, leaving a balance due of \$840.82; that they paid additional rent of \$463.20 on February 01, 2016, leaving a balance due of \$377.62; and that they paid additional rent of \$500.00 on February 15, 2016, leaving a credit of \$122.38.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 05, 2016. As the Tenant had not paid the rent that was due on January 01, 2016 by the time this Notice was posted, I find that the Landlord had the right to end this tenancy pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution disputing the Notice. I have no evidence that they accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenants did not vacate the rental unit on the effective date of the Ten Day Notice to End Tenancy, which was January 18, 2016, I find that they are obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. The Tenant has already paid all of the rent due for January of 2016.

As the Tenants were still occupying the rental unit on the date of the hearing, I find that the Tenants must compensate the Landlord for 18 days month of February that they remained in possession of the rental unit, at a per diem rate of \$39.34, which equates to \$708.12. After applying the rent credit of \$122.38, I find that the Tenants still owe \$585.74 in rent for February of 2016.

I find that the Tenants fundamentally breached the tenancy agreement when the Tenants did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the

effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of February of 2016. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between February 19, 2016 and February 29, 2016, which is \$432.70.

I decline to award compensation for the month of March as it is entirely possible that new tenants can be located for March 01, 2016. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Landlord experiences a loss of revenue in March of 2016.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 29, 2016. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,118.44, which is comprised of \$1,018.44 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$525.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$593.44. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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: February 19, 2016

Residential Tenancy Branch

