



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

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and a monetary Order for unpaid rent.

The agent for the landlord provided affirmed testimony that on February 17, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number, receipt and tracking information was provided as evidence of service.

The mail was returned by Canada Post, marked as unclaimed. Two reminder notices were left for the tenant by Canada Post. The tenant continues to reside in the rental unit but has not claimed registered mail.

A failure to claim registered mail does not allow a party to avoid service. I find that these documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The landlord wished to amend the application to include a claim against the security deposit, unpaid March 2016 rent and parking and to recover the \$100.00 filing fee. As

the sums claimed relate to the most basic terms of the tenancy I have amended the application, in accordance with section 4.2 of the Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and parking?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on June 1, 2014, rent is \$1,045.00 per month due on the first day of each month. A security deposit in the sum of \$510.00 was paid. The tenant signed a parking addendum for monthly parking in the sum of \$25.00. Copies of the tenancy agreement, parking addendum and a Notice of Rent Increase were provided as evidence.

The landlord stated that on February 4, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of February 17, 2016, was served by posting to the tenants' door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,201.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On February 22, 2016 the tenant paid rent owed for January and February 2016. A receipt was issued for use and occupancy only. A copy of the receipt was supplied as evidence.

The tenant failed to pay March 2016 rent and parking.

The landlord has claimed \$1,045.00 for March 2016 rent and \$25.00 for parking.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on February 7, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have

received this Notice on February 7, 2016, I find that the earliest effective date of the Notice is February 17, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on February 17, 2016, 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 ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant paid all rent due, but did not pay the rent within five days of February 7, 2016. The tenant was issued a receipt for use and occupancy only, informing the tenant that the tenancy had not been reinstated.

In the circumstances before me I have no evidence that the tenant disputed the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; February 17, 2016. As a result I find, pursuant to section 46 of the act that the landlord is entitled to an Order of possession.

I find that since February 17, 2016 the tenant has over-held and that the landlord is entitled to per diem rent in the sum of \$1,045.00 to March 31, 2016.

Based on the parking agreement I find that the landlord is entitled to compensation in the sum of \$25.00 for March, 2016 parking.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$510.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$660.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to a monetary Order for unpaid rent and parking.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties and 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: April 01, 2016

Residential Tenancy Branch