



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and loss of rent; other fees; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof of service upon the co-tenant referred to by initials DL. Due to an oversight the registered mail receipt had not been provided as evidence for the other co-tenant referred to by initials AM; however, the landlord orally provided the registered mail tracking number for mail sent to AM. The landlord testified that the registered mail packages were sent to each co-tenant on April 1, 2016 and the tenants remain in possession of the rental unit; however, the registered mail packages were returned as unclaimed.

Section 90 of the Act deems a person to have received mail five days after mailing even if the person refuses to pick up or accept their mail. Based upon the evidence before me I was satisfied that the landlord sent the hearing documents to the tenants at their address of residence at the time of mailing and I deemed the tenants to be served with the hearing documents five days later. Accordingly, I proceeded to hear the landlord's claims against the tenants without the tenants present.

As to the landlord's monetary claim of \$3,000.00 the landlord indicated that it was seeking compensation for "rent for March and month thereafter" and to "collect any fees that accumulate." However, I noted that the landlord had not provided a Monetary Order worksheet or other document to provide a breakdown of this sum except for a ledger that was included for the months up to and including March 2016.

I found the details of dispute sufficiently clear that the landlord is seeking to recover unpaid and/or loss of rent from the tenants and I proceeded to hear that claim. Since the ledger was included in the evidence I found the landlord's request for late payment and NSF fees for March 2016 to be sufficiently clear and I considered that claim. However, I did not further consider any other fees as I found the phrase "any fees that

accumulate” to be too vague to meet the landlord’s requirement under section 59 of the Act, as the applicant, to provide “full particulars” as to the nature of the claim. Therefore, I did not consider the landlord’s request to collect fees or any other damages and loss other than fees for March 2016 and rent but I did give the landlord leave to make a subsequent application to recover any other losses.

#### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid and/or loss of rent?
3. Is the landlord entitled to recover NSF and late fees from the tenants for the month of March 2016?
4. Is the landlord authorized to retain the security deposit?

#### Background and Evidence

The tenants and the former landlord executed a written tenancy agreement providing for a fixed term tenancy from April 16, 2014 until April 30, 2015 and then continue on a month to month basis thereafter. The landlord collected a security deposit of \$375.00 and the tenants were required to pay rent of \$750.00 on the first day of every month.

In June 2015 the current landlord purchased the property and on July 9, 2015 the landlord issued a Notice of Rent Increase. The Notice of Rent Increase indicates that the rent would increase to \$768.00 starting August 1, 2015.

The tenants failed to pay rent for March 2016 when the pre-authorized payment was returned for insufficient funds and on March 3, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The 10 Day Notice indicates rent of \$768.00 was outstanding as of March 1, 2016 and has a stated effective date of March 16, 2016. The tenants did not pay the outstanding rent and did not file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice. Nor, did the tenants return vacant possession of the unit to the landlord.

The landlord attempted to take a pre-authorized payment for April 2016 rent but it was declined due to insufficient funds. On April 20, 2016 the tenant DL paid \$900.00 to the landlord and on April 26, 2016 DL paid a further \$450.00 to the landlord. The landlord accepted these payments for use and occupancy only.

The landlord seeks an Order of Possession as soon as possible. The landlord also seeks to recover unpaid rent for March 2016 and loss of rent for April 2016 and May

2016. Since the date of this hearing is early May 2016 the landlord indicated that it was reasonable that the landlord may be able to re-rent the unit starting May 15, 2016 but that it may also take longer. The landlord also seeks to recover a late fee of \$20.00 and \$25.00 for a NSF fee as recorded in the ledger provided as evidence and pursuant to clause 3 of the tenancy agreement.

Documentary evidence provided for this proceeding included a copy of: the tenancy agreement; the 10 Day Notice; the Notice of Rent Increase; the ledger up to and including March 2016; and, the registered mail receipt for service upon DL.

### Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement, subject to rent increases permitted under the Act.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice on the door of the rental unit on March 3, 2016. Pursuant to section 90 of the Act it is deemed to have been received by the tenants three days later. Accordingly, I find the stated effective date of March 16, 2016 to be compliant with the Act.

Since the tenants did not pay any of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on March 16, 2016 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

As to the landlord's monetary claims, I find the tenants were obligated to pay the increased rent of \$768.00 per month starting November 1, 2015 since the Notice of Rent Increase issued in July 2015 has a non-compliant effective date. Pursuant to section 42(2) of the Act a landlord must give the tenant three full months of advance notice of a rent increase. Section 42(4) also provides that if the stated effective date of the Notice of Rent Increase is incorrect the rent increase takes effect on the earliest date that complies with the Act. Further, if a landlord collects a rent increase that does

not comply with the Act, section 43(5) provides that the tenant may deduct the overpayment from rent.

Giving a Notice of Rent Increase to the tenants in July 2015 would entitle the landlord to receive the rent increase starting November 1, 2015. From the ledger provided to me it appears as though the tenants started paying the rent increase as of August 1, 2015. Accordingly, I find the tenants overpaid \$18.00 in rent for each of the months of August, September and October 2015 and the tenants are entitled to deduct \$54.00 from rent otherwise payable to the landlord.

For the month of March 2016 the tenants' rent payment was returned. Since the monthly rent for March 2016 was \$768.00 and the tenants are entitled to deduct \$54.00 from rent, I find the landlord entitled to recover unpaid rent of \$714.00 for the month of March 2016.

Since the tenants have not vacated the rental unit pursuant to the 10 Day Notice and have continued to occupy the rental unit I find the landlord further entitled to compensation for over-holding. The landlord is awarded compensation of \$768.00 for April 2016 and I accept that the landlord is likely to suffer further loss of rent until May 15, 2016 or later after taking into consideration the tenants have not yet vacated and the unit is not yet re-rented. Therefore, I award the landlords compensation for loss of rent in the amount of \$1,152.00 for the period of April 1 – May 15, 2016 (\$768.00 x 1.5 months).

Finally, I grant the landlord's request to recover an NSF fee and late fee of \$25.00 and \$20.00 respectively as I find the term in the tenancy agreement providing for these fees is compliant with section 7 of the Residential Tenancy Regulations.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the \$100.00 filing fee paid for this application.

In light of all of the above, and taking into consideration the payments made by the tenant on April 20 and 26, 2016, I provide the landlord a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid rent: March 2016	\$ 768.00
Less: overpaid rent in Aug – Oct 2015	(54.00)
Plus: NSF fee and late fee for March 2016	45.00
Plus: loss of revenue April 1 – May 15, 2016	1,152.00
Filing fee	100.00
Less: security deposit	(375.00)
Less: partial payments made in April 2016	<u>(1,350.00)</u>
Monetary Order	\$ 286.00

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$286.00 to serve and enforce upon the tenants.

The landlord was given leave to make a separate application for any other fees, loss of rent incurred after May 15, 2016, if any; and, any other damages or losses not decided upon in this decision.

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: May 04, 2016

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Residential Tenancy Branch