



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 FF, MNR, OPR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear. The landlord appeared at the teleconference hearing with Person W.T. who was a witness. Both the landlord and Person W.T. gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that she sent the tenant a copy of the Notice of Hearing along with her Application, by registered mail. The landlord testified that she sent the registered mail to the rental unit on November 8, 2016. The landlord also testified that on November 14, 2016 the landlord confirmed with the tenant that she had received the landlord's mailing. The landlord provided the Tracking Number orally to confirm the mailing. Taking into account that the online registered mail tracing information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Notice of Hearing and the landlord's Application as of November 13, 2016, the fifth day after the registered mail was sent.

Preliminary and Procedural Matters

At the start of the hearing the landlord withdrew her application for an order of possession stating that the tenant had vacated the rental unit on November 14, 2016. The landlord also withdrew her application for a monetary order for unpaid rent stating that the tenant paid the rent that was owing on November 25, 2016.

The landlord is only seeking recovery of the \$100.00 filing fee paid for this application from the tenant

Issue(s) to be Decided

- Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to Section 72 of the *Act*?

Background and Evidence

The undisputed testimony of the landlord is that the landlord settled her claim for unpaid rent with the tenant prior to the teleconference hearing. The landlord testified that the tenant paid the rent that was overdue on November 25, 2016 after she was served with the 10 Day Notice and the landlord's Application. The landlord testified that the tenant consented to the landlord retaining the security deposit of \$650.00 and then paid the balance that was owing.

Person W.T. testified that he was the one who received the unpaid rent from the tenant on November 25, 2016 and that he and the tenant had a discussion about the filing fee at that time. Person W.T. testified that he asked the tenant about whether she would also be paying the \$100.00 filing fee. Person W.T. testified that he repeated to the tenant that he would be going after the \$100.00 filing fee. Person W.T. further testified that the tenant said that she would be present for the hearing and she would find out more about it.

Analysis

Based on the undisputed testimony of the landlord and Person W.T. provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing and landlord's Application and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result,

I find the landlord's application is fully successful as I find the evidence supports the landlords' claim and is reasonable.

I am satisfied that the tenant was aware that although a settlement was reached, the landlord was still pursuing the \$100.00 filing fee at the hearing, since the filing was necessary due to the actions of the tenant.

I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant for having to bring this Application which resulted in a settlement and payment to the landlord for unpaid rent.

Conclusion

The landlord is entitled to a monetary order in the amount of \$100.00 for recovery of the filing fee. The landlord is granted a monetary order in the amount of \$100.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: December 02, 2016

Residential Tenancy Branch