



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes mnd, mndc, mnr, mnsd, opr, ff

Introduction

The landlord applies for an Order of Possession, a Monetary Order for damage to the unit, unpaid rent and loss of rental income, an order to retain the security deposit and pet damage deposit, and to recover the landlord's filing fee .

The landlord was represented at the hearing, but the tenant did not attend. I accept that the tenant was properly served with the Application for Dispute resolution hearing package and the notice of this hearing by way of registered mail sent to the subject residential rental unit. I further accept that the tenant was properly served with a 10 day Notice to End Tenancy by way of posting on the door (on January 5, 2017). Such service satisfies the provisions of Sections 88 and 89(1) of the Residential Tenancy Act and the tenant is deemed to have received these documents by virtue of Section 90.

The landlord also applies for an order for damage to the premises, and to retain the pet damage deposit. These claims are prematurely made, as the tenant remains in possession, and there has not yet been a move-out condition inspection. Further, these matters are not related in fact and law to the issue of the ending of the tenancy for non-payment of rent. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with a wide array of issues of concern in one short hearing. Accordingly, these further issues that are not related in fact and law to their key claim regarding the notice of the end of this tenancy are not dealt with in this decision, and are all dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issues to Be Decided

- Is the Notice to End Tenancy effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is money payable by the tenant to the landlord?
- If so, is the landlord entitled to retain the security deposit in partial satisfaction of the amount owing?
- Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began March 1, 2016. Rent of \$865.00 is due on the 1st day of each month. A security deposit of \$432.50 was paid at the start of the tenancy (and a pet damage deposit for the same amount was also paid). On January 5, 2017 the landlord served the tenant with a 10-Day Notice to End Tenancy, after not receiving rent for the month of January. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice. The tenant remains in possession, and has paid no further rent.

Analysis

By virtue of section 46(5)(a) of the Residential Tenancy Act, in the absence of a required rental payment after being served with a 10 Day Notice to End Tenancy, or a dispute of that Notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice. The effective date of the Notice has passed and no rent has been paid since the Notice was given. The tenancy has therefore ended, and the landlord has established a right to possession. The landlord requests that this Order be effective February 28, 2017. Such order is made.

The landlord is entitled to recover compensation equal to two months of rent (for January and February) which equals \$1,730.00. This includes unpaid rental arrears to the effective end date of the tenancy (10 days following receipt of the Notice) and compensation for the tenant overholding after the end of the tenancy (pursuant to section 57(1)(3) of the Residential Tenancy Act. Since the landlord is successful with this claim, it is also appropriate that the landlord recover the \$100.00 filing fee from the tenant, and to retain the security deposit in partial satisfaction of the sum found owing by the tenant.

In the absence of an agreement by the tenant, no order to retain the pet damage deposit is appropriate, as section 38(7) restricts retention of that deposit to deal with damage caused by the pet.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective February 28, 2017. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$1,830.00 representing the rental arrears and overholding rent for January and February, and the filing fee.

I order pursuant to section 38(1)(d), that the full amount of the \$432.50 deposit be retained by the landlord, in partial satisfaction of the monetary award noted above. The remaining balance of the award of \$1,397.50 must be paid immediately by the tenant to the landlord.

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 16, 2017

Residential Tenancy Branch