



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, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony that both tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 12, 2017. The tenants did not attend or submit any documentary evidence. The landlord provided a copy of the Canada Post Customer Receipt labels as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per sections 88 and 89 of the Act.

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 recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2016 on a fixed term tenancy ending on March 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 22, 2016. The monthly rent is 1,070.00 payable on the 1st day of each month. A security deposit of \$535.00 was paid.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$3,360.00 which consists of:

Unpaid rent \$1,070.00	December 2016
NSF \$25.00	December 2016
Late Rent Fee \$25.00	December 2016
Unpaid rent \$1,070.00	January 2017
NSF \$25.00	January 2017
Late Rent Fee \$25.00	January 2017
Unpaid rent \$1,070.00	February 2017
NSF \$25.00	February 2017
Late Rent Fee \$25.00	February 2017

The landlord stated that the tenants were served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated December 6, 2016 by posting it to the rental unit door on December 6, 2016. The 10 Day Notice states that the tenants failed to pay rent of \$1,070.00 that was due on December 1, 2016 and an effective end of tenancy date of December 19, 2016. The landlord provided undisputed affirmed evidence that as of the date of this hearing the tenants still occupy the rental unit and have paid no rent since the 10 Day Notice dated December 6, 2016 was served.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by December 19, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenants do

not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

I find that as the landlord has provided undisputed affirmed evidence that the tenants failed to pay any rent for December 2016, January 2017 and February 2017 and still occupy the rental unit, that the landlord is entitled to recovery of unpaid rent of \$3,210.00, NSF Charges of \$75.00 and Late Rent Fees of \$75.00, totalling \$3,360.00 for all three months.

Having been successful for the application, the landlord is entitled to recovery of the \$100.00 filing fee. I authorize the landlord in offsetting this claim to retain the \$535.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,925.00.

These orders must be served upon the tenant(s). Should the tenant(s) fail to comply with the orders, the orders may be filed with the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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 07, 2017

Residential Tenancy Branch