



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. She stated that the 10 Day Notice to End Tenancy dated April 6, 2017 to be effective April 19, 2017 was served by posting it on the door and the Application for Dispute Resolution was served by registered mail (number provided). I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord attended although the tenant was served with the Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 1, 2016, a security deposit of \$707.50 was paid and rent is currently \$1415 a month. The landlord said the tenant owed \$1465 for April 2017 (\$1415 rent + \$25 late fee + \$25 NSF fee) when the Notice to End Tenancy was served. The tenant paid \$1465 on April 20, 2017 but the landlord gave a receipt "for use and occupancy only" as it was beyond the 5 days permitted by section 46 of the Act to cancel the Notice. The landlord is claiming the rental arrears of \$1465 for May 2017 and requests an Order of Possession effective May 31, 2017. She said the tenant indicated they were vacating on May 31, 2017. The tenant submitted no documents to dispute the amount owing.

In evidence are several 10 Day Notices to End Tenancy and proofs of service, a registered mail receipt, a receipt for 'use and occupancy only' and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. There is outstanding rent and the tenant did not pay the rent owed for April 2017 within the 5 days permitted by section 46 of the Act. Although the tenant subsequently paid rent for April, the landlord issued the receipt stating it was 'for use and occupancy only' to indicate clearly their intention of not reinstating the tenancy by accepting monies owed. The Tenant also has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. I find the tenancy ended on April 19, 2017. An Order of Possession is issued effective May 31, 2017 as requested.

Monetary Order

I find that there is over-holding rent in the amount of \$1465 which represents rent to May 31, 2017 plus \$25 late fee and \$25 NSF fee as provided in the tenancy agreement.

Conclusion:

I find the landlord is entitled to an Order of Possession effective May 31, 2017 and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amount owing and to recover filing fees paid for this application. I give the landlord leave to re-apply for further rent or damages owed within the legislated time limit.

Calculation of Monetary Award:

Over holding rent May 2017	1415.00
Late fee + NSF fee	50.00
Filing fee	100.00
Less security deposit	-707.50
Total Monetary Order to Landlord	857.50

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 30, 2017

Residential Tenancy Branch