



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Ltd Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC MND FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 29, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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;
- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord's agent (the "agent") and one of the tenants (the "tenant"), attended the hearing and provided testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party raised any issues with respect to service of the Notice of Hearing, or the documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The agent stated that she would like to amend her application because, at this point, she only wants to apply for an order of possession and to recover the cost of the filing fee. In consideration of this, I hereby amend the agent's application accordingly.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?

2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on May 1, 2016. Current rent is \$1026.63 per month and is due on the first day of each month. The Landlord holds a security deposit in the amount of \$495.00.

The agent testified that the tenants did not pay August 2017 rent on time. The agent stated that she issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), by posting it to the tenant's door on August 4, 2017, because they had still not received any rent for August. Service of this document was witnessed by a third party. The 10 Day Notice indicated that the amount of outstanding debt accrued at that time was \$1,026.63. The agent testified that this amount represented rent for the month of August 2017. The agent stated that the tenants then paid \$630.00 on August 8, 2017, \$290.00 on August 15, 2017, and \$157.00 on August 21, 2017. The agent also stated that the tenants have paid rent for September.

The tenant arrived 20 minutes late to the hearing, but was provided with a summary of the agent's testimony. The tenant confirmed the evidence provided by the agent, including the amounts and dates of payments.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants failed to pay rent in full on August 1, 2017, as per their tenancy agreement. Further, I am satisfied that the tenants owed \$1,026.63, at the time the 10 Day Notice was issued, on August 4, 2017. The agent attached a copy of the 10 Day Notice to the tenants' front door. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the tenants are deemed to have received the 10 Day Notice on August 7, 2017.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. Although the tenants made a partial payment of \$630.00 on August 8, 2017, the evidence before me indicates that at the end of the 5 day period, on August 12, 2017, the tenants had not paid rent in full. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee the landlord paid to make the application for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$100.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order in the amount of **\$100.00** for the cost of filing this application. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 29, 2017

Residential Tenancy Branch