



# 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, MND, MNDC, MNSD, FF

#### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent and a witness for the landlord attended the hearing and the landlord's agent gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on September 19, 2017 and has provided proof of such service, and although the date is not visible on the Canada Post cash register receipt, I accept the testimony of the landlord's agent and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord did not lead any evidence with respect to damages, but did not withdraw that portion of the application. Since the tenancy has not ended, I find it to be premature, and I dismiss the damage claim with leave to reapply.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

#### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2010 and the tenant still lives in the rental unit. Rent in the amount of \$1,275.00 per month was originally payable under the tenancy agreement on the 1<sup>st</sup> day of each month and was increased during the tenancy. The rental amount in July, 2017 was \$1,325.00 per month, and was increased again effective August 1, 2017 to \$1,360.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$637.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhome and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant fell into arrears of rent, and on July 4, 2017 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated July 4, 2017 and contains an effective date of vacancy of July 17, 2017 for unpaid rent in the amount of \$1,325.00, plus \$25.00 late fees that was due on July 1, 2017. The tenant paid the rent, but the cheque was returned for insufficient funds.

The tenant was served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 5, 2017 by posting it to the door of the rental unit, and a copy has been provided. It is dated September 5, 2017 and contains an effective date of vacancy of September 18, 2017 for unpaid rent in the amount of \$4,045.00 that was due on September 1, 2017. The tenant has not paid any rent since it was posted to the door, and has not served the landlord with an application for dispute resolution disputing the notice.

The tenant is currently in arrears the sum of \$5,405.00 for July through October, 2017, and the landlord seeks an Order of Possession, a monetary order for the unpaid rent, recovery of the \$100.00 filing fee and an order permitting the landlord to keep the \$637.50 security deposit in partial satisfaction of the claim.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord's agent that the tenant was served with the later 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on September 5, 2017. The landlord testified that the tenant has not paid the rent and has not served the landlord with an application for dispute resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony that the tenant is in arrears of rent the sum of \$5,405.00 including this month.

The tenancy agreement does not indicate any fees for late payment of rent, and I dismiss the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$637.50 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$4,867.50.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$637.50 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,867.50.

This order is final and binding and may be enforced.

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: October 11, 2017

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Residential Tenancy Branch