



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 MNRL-S, OPR, FFL

Introduction

The teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for unpaid rent, an Order of Possession based on unpaid rent and for the recovery of the filing fee for this application.

An agent for the Landlord (the “Landlord”) and the Tenant both called into the teleconference hearing. Service of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) was addressed and the Tenant confirmed receipt of the Notice of Hearing and the evidence package by registered mail on February 28, 2018. The Tenant did not submit any evidentiary material.

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.

Issues 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?

Background and Evidence

Both parties agreed that the tenancy began on March 1, 2003. The Landlord submitted that they do not have a Tenancy Agreement on file as the building was previously

owned by a different company and this information was not passed along. The current Landlord has been the landlord since around 2014.

The Tenant paid a security deposit in the amount of \$332.50 at the start of the tenancy. No pet damage deposit was paid. The Landlord has applied to keep the security deposit in partial satisfaction of the money owed.

Monthly rent is currently \$994.83 and due on the first of the month, along with a \$35.00 parking fee for a total monthly amount of \$1,029.83. During the hearing, both parties were in agreement that rent has not been paid for January, February, March, April and May 2018. The Landlord also charges a \$25.00 monthly late payment fee.

On February 6, 2018, the Landlord issued a 10 Day Notice to End Tenancy (the "10 Day Notice") which was served by posting on the tenant's door. The Tenant confirmed receipt of this 10 Day Notice, but was unsure of exactly when he received it. As per Section 90 of the *Act*, the 10 Day Notice is deemed to have been received three days after posting on the tenant's door. Therefore, the 10 Day Notice is deemed to have been received on February 9, 2018. The effective end of tenancy date was stated on the 10 Day Notice as February 19, 2018.

The Tenant testified that he has not paid rent for the months of January, February, March, April and May 2018. He was also in agreement as to the amounts owed, with a monthly rent in the amount of \$994.83, as well as \$35.00 per month for parking and a \$25.00 monthly late payment fee. The Tenant testified that he understands that he will need to move out and that he plans to pay the money owing as soon as possible.

The parties were provided an opportunity to have a settlement discussion during the hearing as per Section 63 of the *Act* and they came to the following settlement agreement:

1. The Tenant will move out by May 29, 2018 at 1 pm. The Landlord will have full possession of the rental unit as of May 29, 2018 at 1 pm.

Analysis

Based on the evidence before me, and the testimony of both parties, I find that the Tenant received the 10 Day Notice on February 9, 2018. The Tenant did not apply to dispute the 10 Day Notice and did not pay the rent owing within the five day period required under Section 46(4) of the *Act*. Therefore, in accordance with Section 46(5) of

the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

As per the settlement agreement reached by the parties during the hearing, the Tenant will vacate the rental unit by 1 pm on May 29, 2018. The parties both confirmed understanding of the settlement agreement and that they were free to come to a settlement agreement on their own freewill and without coercion. As per the rule 8.4 of the Rules of Procedure, any settlement agreement agreed upon by the parties during the hearing will be recorded as a decision and/or orders by the arbitrator.

The parties also expressed understanding during the hearing that despite a settlement agreement, an Order of Possession will be issued to the Landlord for possession of the rental unit by May 29, 2018 in accordance with Section 55 of the *Act*.

The Landlord and the Tenant were in agreement as to the amounts owing for the months of January, February, March, April and May 2018. A Monetary Order for the full amount of rent, parking and late fees owed, as set out in the table below, will be issued to the Landlord as per Section 67 of the *Act*.

As the Landlord is in possession of a security deposit, I refer to Section 38(3) of the *Act* which states that a landlord may retain an amount from the security deposit as ordered by the director. In accordance with this Section, I find that the Landlord is entitled to withhold the full security deposit at the end of the tenancy in partial satisfaction of the money owed.

A security deposit in the amount of \$332.50 was paid on March 1, 2003. As per the calculations from the calculator on the Residential Tenancy Branch website, I find that the interest owed on the security deposit is \$11.77. Therefore, the Landlord is entitled to withhold the full amount of the security deposit plus interest for a total of \$344.27.

As the Landlord was successful in their application, I find that they are entitled to the return of the filing fee for this application in the amount of \$100.00 as per Section 72 of the *Act*.

Monetary Order Calculations:

January 2018 rent and parking	\$1,029.83
January 2018 late fee	\$25.00

February 2018 rent and parking	\$1,029.83
February 2018 late fee	\$25.00
March 2018 rent and parking	\$1,029.83
March 2018 late fee	\$25.00
April 2018 rent and parking	\$1,029.83
April 2018 late fee	\$25.00
May 2018 rent and parking	\$1,029.83
May 2018 late fee	\$25.00
Filing fee	\$100.00
Less security deposit with interest	(\$344.27)
Total owing to Landlord	\$5,029.88

Conclusion

I grant an **Order of Possession** to the Landlord effective on **May 29, 2018 at 1 pm**. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I **Order** that the Landlord retain the security deposit and interest in the amount of \$344.27, in partial satisfaction of the total amount owed.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$5,029.88** for the balance of rent and late fees owed as of May 3, 2018, as well as the recovery of the filing fee. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 03, 2018

Residential Tenancy Branch