



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, RP

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2019 ("cancelled 10 Day Notice") and dated August 12, 2019 ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the site manager for the landlord company named in both applications and that she had permission to represent the landlord company as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was served with the landlord's application for dispute resolution, notice of hearing, and first evidence package on August 30, 2019, and second evidence package on September 27, 2019, both by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing for the first service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application, notice of hearing and first evidence package on September 4, 2019, five days after its registered mailing.

I notified the landlord that I could not consider the landlord's second evidence package because it was deemed received by the tenant on October 2, 2019, five days after its registered mailing on September 27, 2019. This is late as it is less than 7 and 14 days prior to this hearing, contrary to Rules 3.14 and 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord testified that she posted the landlord's 10 Day Notice to the tenant's rental unit door on August 12, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 15, 2019, three days after its posting.

At the outset of the hearing, the landlord confirmed that the landlord's 10 Day Notice, dated August 2, 2019, was cancelled and of no force or effect, because it contained the wrong amount of rent on it.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include September and October 2019 rent of \$1,650.00, totalling \$3,300.00.

The tenant is aware that rent is due on the first day of each month. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

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?

Is the landlord entitled to recover the filing fee for its application?

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on April 15, 2019 for a fixed term ending on April 30, 2020. Monthly rent in the amount of \$1,650.00 is payable on the first day of each month. A security deposit of \$825.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of August 25, 2019, indicating that rent in the amount of \$5,830.00 was due on August 1, 2019. The landlord provided a copy of the notice. The landlord confirmed that unpaid rent and parking were added together in the unpaid rent section of the 10 Day Notice as well as the monetary order.

During the hearing, the landlord was calculating the unpaid rent and parking amounts. She said that rent of \$7,480.00 from April to August 2019, and parking of \$200.00 from May to August 2019, totalling \$7,680.00, was due. She stated that the tenant paid \$1,850.00, leaving a balance of \$5,830.00, which was indicated on the 10 Day Notice. She claimed that without the parking charges, the rent due was \$5,630.00.

The landlord testified that in addition to the \$5,830.00 due, the tenant owes \$1,650.00 in rent and \$50.00 in parking, for each month from September to October 2019, totalling \$3,400.00.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord seeks a monetary order of \$9,230.00, which includes rent and parking. The landlord also seeks to recover the \$100.00 application filing fee.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which the landlord said was the first day of each month. Section 52(d) of the *Act* requires the notice to indicate the grounds for ending the tenancy.

I find that the tenant did not have notice of the proper amount of rent due. The 10 Day Notice provided the amount of \$5,830.00 due on August 1, 2019, which included both rent and parking. I find that the tenant did not have an opportunity to pay the rent in order to cancel the notice because the rent information supplied by the landlord was incorrect. The amount of parking was not provided separately. The landlord did not even apply for unpaid parking, it only applied for unpaid rent, in this application.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice, and I dismiss this application without leave to reapply. I find that the landlord's 10 Day Notice does not comply with section 52 of the *Act* because it indicates the wrong amount of rent due on the notice. The landlord's 10 Day Notice, dated August 12, 2019, is cancelled and of no force or effect.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord provided undisputed evidence that the tenant failed to pay rent of \$1,650.00 from May to October 2019, and prorated rent of \$880.00 for April 2019, totalling \$10,780.00, minus the \$1,850.00 paid by the tenant, leaving a balance of \$8,930.00. Therefore, I find that the landlord is entitled to rental arrears of \$8,930.00 from the tenant. The landlord is provided with a monetary order for same.

As the landlord was mainly unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$8,930.00 against the tenant. 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.

The landlord's two 10 Day Notices, dated August 2, 2019 and August 12, 2019, are cancelled and of no force or effect.

The remainder of the landlord's application is dismissed without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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 08, 2019

Residential Tenancy Branch