



Dispute Resolution Services

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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 **MNR-DR, OPR-DR-PP, FFL**

Introduction

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") and pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent NN attended for the landlord ("the landlord"). The landlord provided affirmed testimony that the landlord served the tenants ("the tenant") separately with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 15, 2021 and deemed received by the tenants under section 90 of the *Act* five days later, that is, on April 20, 2021.

The landlord provided the Canada Post Tracking Numbers and copies of receipts in support of service. Further to the landlord's testimony and supporting documents, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on April 20, 2021 pursuant to sections 89 and 90.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 41 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Preliminary Amendment

At the outset, the landlord requested two amendments to the landlord's application to change the monetary order for outstanding rent to \$9,970.45 and to authorize the landlord to apply the security deposit of \$905.00 to any award. The landlord's application, submitted on March 18, 2021, pre-dated the due date for amounts owing for rent for subsequent months and did not consider payments made by the tenant which were accepted by the landlord for use and occupancy only. The landlord testified the landlord overlooked asking that the security deposit to applied to the award.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include accruing rent and to consider payments on outstanding amounts made by the tenant. I also find the tenant could reasonably anticipate that the landlord would request that the security deposit be applied to any award. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's applications to increase the landlord's overall claim for outstanding rent to \$9,970.45 and to allow the landlord to apply the security deposit to the award.

The total monetary order requested by the landlord is \$9,970.45 as well as \$100.00 reimbursement of the filing fee. The landlord's claim is amended as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$9,970.45
Reimbursement filing fee	\$100.00
(less security deposit)	(\$905.00)
TOTAL CLAIM - DAMAGES	\$9,165.45

Issues

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing. The landlord submitted a copy of the lease and summarized the background of the tenancy between the landlord and the tenant:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	June 1, 2018
Date of ending	ongoing
Monthly rent payable on 1 st	\$1,855.20
Security deposit	\$905.00
Pet deposit	none
Forwarding address provided	no
Date of landlords' Application	March 18, 2021

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord testified as the arrears of rent and utilities as set out earlier. The landlord submitted copies a Repayment Plan, a Monetary Order Worksheet, and a current rental ledger.

The landlord testified the landlord posted the Ten-Day Notice to the tenant's door on March 4, 2021 thereby effecting service under section 90 of the Act on March 7, 2021. The landlord submitted a copy of the Ten-Day Notice as evidence which is in the standard RTB form. The Notice states the arrears of rent are \$6,183.35.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of March 17, 2021. The landlord testified the tenant did not pay the amount owing in full.

The tenant did not apply to cancel the Notice.

The landlord provided uncontradicted testimony the amounts claimed remain unpaid and owing to the landlord.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating amounts outstanding as stated above at the time the Ten-Day Notice was served and at the hearing.

The tenant continues to occupy the unit.

Conclusion

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I accept the landlord's testimony that the tenant was served with the Ten-Day Notice as testified and in accordance with the *Act*.

I accept the landlord's testimony and documentary evidence and find the tenant did not pay the overdue amount or dispute the Ten-Day Notice within the five-day period following service.

The tenant has not attended the arbitration. Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit by that date.

Based on the landlord's testimony and evidence including testimony that the tenant continues to reside in the unit, I find the landlord has met the burden of proof on a balance of probabilities for an Order of Possession.

I therefore grant the landlord an Order of Possession effective two days after service.

Based on the uncontradicted testimony and documentary evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$9,970.45.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

I authorize the landlord to apply the security deposit to the award.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$9,970.45
Reimbursement filing fee	\$100.00
(less security deposit)	(\$905.00)
TOTAL Monetary Order	\$9,165.45

In summary, I grant the landlord a Monetary Order for **\$9,165.45** and an Order of Possession effective two days after service.

Conclusion

I grant the landlord a Monetary Order for **\$9,165.45** and an Order of Possession effective two days after service. These Orders must be served on the tenant. If the tenant fails to comply with these Orders, the landlord may file the Orders with the Courts of British Columbia to be enforced as Orders 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: July 30, 2021

Residential Tenancy Branch