



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

Landlord: **OPR-DR, MNR-DR, FFL**

Tenant: **FFT, CNR**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- Authorization to recover the filing fee from the other party pursuant to section 72; and
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:20 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager AP ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord acknowledged being served with the tenant's application for dispute resolution and an amendment to the application seeking to dispute a second notice to end tenancy.

The landlord testified she sent her Notice of Dispute Resolution Proceedings to the tenant at his residential address via registered mail on April 5, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the package was returned to her as undelivered. I deem the tenant sufficiently served with the landlord's Notice of Dispute Resolution Proceedings on April 10, 2022, five days after April 5th, the day it was sent via registered mail in accordance with sections 89 and 90 of the *Act*.

This hearing proceeded in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the landlord be granted an Order of Possession for unpaid rent?

Should the landlord be granted a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The fixed one year tenancy began on March 1, 2021 with rent set at \$1,800.00 per month payable on the first day of each month. Parking and a storage locker, totalling \$125.00 was collected with rent pursuant to separate addendums to the tenancy agreement, making the tenant's total payments \$1,925.00 per month.

The tenant paid rent until the end of December but didn't pay January's rent. On February 2, 2022, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting it to the tenant's door. Neither party provided a copy of this notice to end tenancy, however the landlord testified that the notice stated the tenant failed to pay \$1,925.00 rent that was due on January 1st.

The landlord testified that she spoke with the tenant after serving the first notice to end tenancy and the tenant told her he had Covid and was going to be late with his rent.

The landlord decided not to pursue the first notice to end tenancy, however the tenant filed his application to dispute the notice on February 9th.

The tenant didn't pay January's rent or February's rent. On February 15th, the landlord served the tenant with a second 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy to the tenant's door. A signed, witnessed proof of service document was provided by the landlord, as was a copy of the notice to end tenancy. This notice to end tenancy states the tenant failed to pay rent in the amount of \$3,850.00 that was due on February 1, 2022. It provides an effective date of February 28, 2022. The landlord testified that the tenant served her with an amendment to the original dispute file, disputing the second notice to end tenancy.

The landlord testified that the tenant has not paid the rent shown as owing on the notices to end tenancy or any rent thereafter. The tenant does not have any right to deduct any or all of the rent, as far as the landlord is aware.

Analysis

The tenant did not attend this hearing to present any evidence or submissions regarding his application. Rule 7.3 of the Rules of Procedure states that 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. I dismiss the tenant's application without leave to reapply.

The tenant is deemed served with the first notice to end tenancy on February 5, 2022, three days after it was posted to his door; and the tenant is deemed served with the second notice to end tenancy on February 18th, three days after it was posted to his door, both in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date. The tenant failed to pay the rent identified as owing in either of the 10 Day Notices in full within five days of receiving the Notices. Although he filed an application to dispute the notices, he did not attend the

hearing to provide a legitimate reason for failing to pay the rent as required by section 26 of the *Act*. I find the tenant in breach of section 26, and I uphold the landlord's notice to end tenancy dated February 15, 2022. As the effective date stated in the notice to end tenancy has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

Based on the undisputed evidence and testimony of the landlord, I am satisfied the tenant was required to pay \$1,800.00 in rent and an additional \$125.00 per month in parking and storage locker fees and failed to do so for the months of January and February 2022. Consequently, I grant the landlord a monetary order in the sum of \$3850.00 which represents the unpaid rent together with the parking fees and storage locker fees for the months of January and February 2022.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord continues to hold the tenant's security and pet damage deposits totaling \$1,800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire sum in partial satisfaction of the monetary award.

Item	Amount
Rent and fees for storage and parking for January and February, 2022	\$3,850.00
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$1,800.00)
Total	\$2,150.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

Pursuant to section 67, I award the landlord a monetary order in the amount of \$2,150.00.

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 17, 2022

Residential Tenancy Branch