



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Magsen Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on April 3, 2013, the tenant did not attend. The landlord's agent testified and provided evidence of having served the tenant on that date and in that manner and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the conference call hearing was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 1, 2004 and was extended from time to time, ultimately resulting in a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,928.00 per month is currently payable under the tenancy agreement on the 1st day of each month. On May

8, 2004 the landlord collected a security deposit from the tenant in the amount of \$812.50 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant failed to pay rent for the months of March and April, 2013 and the tenant is currently in arrears the sum of \$3,856.00. The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for this hearing. The notice is dated March 4, 2013 and states that the tenant failed to pay rent in the amount of \$1,978.00 that was due on March 1, 2013. Both pages of the 2-page form have been provided. The notice also states that: the tenant is given 10 days notice to move out of the rental unit, by March 19, 2013 and is signed by the landlord's agent. The notice was served on the tenant by registered mail on March 4, 2013.

The landlord's agent also testified that since the issuance of the notice, the tenant is further in arrears for the month of April, 2013, and the tenant has made no payments towards those arrears to date. The landlord has not been served with an application for dispute resolution from the tenant and the landlord's agent believes the tenant has not disputed the notice to end tenancy issued on March 4, 2013.

The landlord requests an Order of Possession and a monetary order for the outstanding rental arrears.

The landlord also requests recovery of the \$50.00 filing fee for the cost of this application and recovery of a \$50.00 filing fee for the cost of an application that was made in January, 2013. The landlord's agent testified that the tenant paid the rent which was the subject of the January, 2013 dispute, and the matter settled. A copy of the Decision of the Arbitrator was not provided for this hearing. The landlord has provided a copy of a tenant ledger for this rental unit which shows that the \$50.00 remains unpaid and is carried as a balance outstanding and was applied to the ledger on January 29, 2013.

The landlord also requests a monetary order for the month of May, 2013 because the tenant still resides in the rental unit and the landlord will not be able to re-rent before May 1, 2013.

Analysis

The *Residential Tenancy Act* provides that a landlord may serve a tenant with a notice to end tenancy on any date after rent is payable under the tenancy agreement if rent remains unpaid. Once served, the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice within that 5 day period. If the tenant

does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, I accept the testimony of the landlord's agent that the tenant was served on March 4, 2013 with a notice to end tenancy by registered mail. I find that the tenant is deemed to have been served with the notice on March 9, 2013, being 5 days after mailing as provided in the *Act*. The tenant has not disputed the notice and has not paid the rent in full and therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I find that the landlord has established unpaid rent in the amount of \$3,856.00 for the months of March and April, 2013 and the landlord is entitled to a monetary order in that amount.

With respect to the landlord's claim for rent for the month of May, 2013, I dismiss that portion of the application with leave to reapply. The landlord may be able to re-rent the premises by the middle of May, 2013, and the landlord is at liberty to make a claim as against this tenant for either partial or full payment of that month of rent after mitigating any loss that the landlord may suffer as a result of the fundamental breach of non-payment of rent.

With respect to the landlord's claim for recovery of a filing fee from a previous hearing, a party is entitled to recovery of such fees if successful with the application. In this case, the parties settled the claim and no orders were obtained, and therefore, I find that the landlord is not entitled to recovery of those fees.

Since the landlord has been successful with this application, the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,906.00.

The landlord's application for recovery of a filing fee from a previous application is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for rental revenue loss for the month of May, 2013 is hereby dismissed with leave to reapply.

This order is final and binding on the parties 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: May 01, 2013

Residential Tenancy Branch