



Dispute Resolution Services

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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 dealt with an application by the landlord for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant did not appear although he was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 26, 2013.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

This tenancy has proceeded by way of successive fixed term tenancy agreements. The latest term began on July 1, 2012 for a one year term. The rent is \$2,800.00 due in advance on the first day of each month. The tenant paid a security deposit of \$1,250.00 on June 20, 2006. The tenant did not pay rent for April when it was due. On April 3, 2013 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by sending it to him by registered mail. The Notice to End Tenancy said that the tenant failed to pay rent of \$2,900.00 that was due on April 1, 2013. It appears from the landlord's ledger that the additional \$100.00 relates to a \$100.00 filing fee that was included in a previous monetary order granted to the landlord in an earlier dispute resolution proceeding. The tenant has not paid rent for April or for May and he did not file an application to dispute the Notice to End Tenancy.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the

arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – The landlord requested a monetary order including unpaid rent for May. The tenant is aware that no rent has been paid for May, yet he continues to occupy the rental unit; I therefore allow the landlord to amend its application to claim May rent. I find that the landlord has established a total monetary claim of \$5,600 for the outstanding rent for April and May. I do not allow the claim for an additional \$100.00 for April because the landlord received a monetary order on December 3, 2012 that included the \$100.00 amount which was an award with respect to the filing fee. To award that same amount again would amount to a double recovery. It is up to the landlord to enforce the previous order. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$5,650.00 and I grant the landlord an order under section 67 in the said amount. This order may be filed in the Small Claims 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 17, 2013

Residential Tenancy Branch

