



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, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities, to keep all or part of the pet damage or security deposit, and to recover the filing fee from the tenants for the cost of this application.

The landlord's agent served the tenants with a copy of the application and Notice of Hearing documents by registered mail. The landlord provided the Canada Post tracking numbers to prove this method of service. In the absence of any other evidence to contradict this, I find that the tenants were served the hearing documents as per the *Residential Tenancy Act*.

The landlord's agent attended the hearing and provided affirmed testimony during the hearing. The landlord also provided evidence in advance of the hearing and was also permitted, under Section 11.5 of the Rules of Procedure, to provide a copy of the notice to end tenancy after the hearing took place as a copy had been provided but was not before me at the time of the hearing.

There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

Issue(s) 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 relating to August and September, 2013?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy started on March 1, 2013 for a fixed term of one year. A written tenancy agreement was completed and the tenants paid a security deposit of \$365.00 on the same day, which the landlord still retains. Currently, rent in the amount of \$730.00 is payable by the tenants on the first day of each month.

The landlord's agent testified that the tenant's rent is directly deposited into the landlord's bank account in the form of two cheques for the amount of \$365.00 by the BC government. The landlord's agent testified that for August, 2013 only one of the cheques had been deposited into his account leaving an outstanding balance of \$365.00. The landlord contacted the tenants who stated that they would check with the government to see why this had not been paid. However, the landlord did not receive a call back despite calling the tenants several times after.

As a result, the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, on August 15, 2013 by registered mail. The Canada Post tracking numbers were provided as evidence for this method of service. The notice shows an expected date of vacancy of August 30, 2013, due to \$365.00 of unpaid rent due on August 1, 2013.

The landlord's agent also testified that he received only half of the September, 2013 rent. As a result, the landlord now seeks to claim a total of \$730.00 rent relating to August and September, 2013.

The tenants failed to attend the hearing or provide any written submissions prior to this hearing taking place to contradict any of the evidence provided by the landlord.

Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents on the approved form complied with the requirements of the *Act*.

The tenants were served by the landlord with the notice to end tenancy on August 15, 2013, by registered mail. The *Act* states that documents served in this manner are

deemed to have been received five days after such mailing. Therefore, I find that the tenants were deemed to be served on August 20, 2013, and had until August 25, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenants did. As a result, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and therefore, the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$730.00.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenants to the landlord is \$780.00. As the landlord already holds a \$365.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$415.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$415.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: September 20, 2013

Residential Tenancy Branch

