



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC. & MAX LI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 21, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The Tenant said the Landlord's hearing package was incomplete as he was missing the Application and the Notice of Hearing. The Landlord said he sent the full package To the Tenant, which was the same as the package he sent into the Residential Tenancy Branch. I accept on the balance of probabilities that the Tenant was served the full package.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 21, 2006 as a fixed term tenancy with an expiry date of June 30, 2007 and has renewed on different tenancy agreement to the present date. The most recent tenancy agreement started on July 1, 2013 as a fixed term tenancy with an expiry date of December 31, 2013. Rent is \$2,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,250.00 on June 20, 2006.

The Landlord said that the Tenant did not pay \$2,800.00 of rent for August, 2013 when it was due and as a result, on August 2, 2013 he sent a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2013 by registered mail to the Tenant. The Landlord provided tracking information in his evidence package. The Tenant said he did not receive the Notice to End Tenancy. On checking the tracking information at the Canada Post web site it showed the Tenant received the Notice to End Tenancy and he had signed for it. The Tenant said he must have been mistaken. The Landlord said the Tenant has unpaid rent for September of \$2,800.00 and they anticipate the October rent will not be paid. The Landlord said there is not enough time to re-rent the unit for October so the Landlord requested October rent of \$2,800.00 be included in the application as it is a fixed term tenancy ending on December 31, 2013.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord wants to end the tenancy as soon as possible. The Landlord requested an Order of Possession if his application is successful.

The Tenant said he agrees that he has not paid the rent for August and September, 2013, because the Landlord has not repaired items that the Tenant has requested the Landlord to repair. The Tenant said there was work done in the neighbourhood that involved blasting, which damaged the rental house. The Tenant said there are cracks in the wall and ceilings and some of the doors do not closing correctly. The Tenant said he has waited approximately 1 year for the repairs and the Landlord has not made the repairs so his only recourse to get the repairs done was not to pay the rent. The Tenant said he will pay the unpaid rent and the October rent when the repairs are completed.

The Tenant said in closing that if he paid the rent would the Landlord agree to continue the tenancy.

The Landlord said in closing that he wants to end the tenancy as soon as possible.

Analysis

Section 46(4) of the Act states that **within 5 days of 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 of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it was sent by registered mail, or on August 7, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 12, 2013.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Section 26 (1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution and does not have the right to with hold part or all of the unpaid rent. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order. The Landlord is entitled to recover unpaid rent for August, 2013 in the amount of \$2,800.00 and for unpaid rent of \$2,800.00 for September, 2013.

I also find that the Landlord is entitled to lost rental income for October, 2013, in the amount of \$2,800.00 as this is a fixed term tenancy and the Landlord is most probably not able to rent the unit for October, 2013. The Landlord does have an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$5,600.00	
	Loss of Rental Income:	\$2,800.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$8,450.00
Less:	Security Deposit	\$1,250.00	
	Accrued Interest	\$ 41.26	
	Subtotal:		\$1,291.26
	Balance Owing		\$7,158.74

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$7,158.74 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 30, 2013

Residential Tenancy Branch

