



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP MEDALLION REALTY
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. The landlord also applied to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenant for the cost of this application.

The landlord served the tenant with a copy of the application and Notice of Hearing documents by registered mail on September 11, 2013. The Canada Post tracking numbers were provided as documentary evidence showing the tenant had received the documents on September 13, 2013. Based on this, I find the tenant was served the hearing documents as required by the Residential Tenancy Act (referred to as the *Act*).

The landlord's agent attended the hearing to give affirmed testimony and also provided evidence in advance of the hearing. There was no appearance for the tenant, 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 outstanding rent relating to August, September and October, 2013?
- Is the landlord entitled to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy began on July 1, 2013 for a fixed term of one year. The tenant paid a security deposit of \$650.00 on June 18, 2013 which the

landlord still retains. Currently, rent in the amount of \$1,300.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant's post dated cheque for the month of August, 2013 was returned as unpaid. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 23, 2013 by leaving it with an adult who apparently resides with the tenant at the rental unit. The notice was provided as evidence for the hearing. The notice shows an amount of \$1,300.00 for unpaid rent due on August 1, 2013 with an expected date of vacancy of September 4, 2013.

The landlord's agent testified that the tenant also failed to pay for September and October, 2013 rent in the amount of \$1,300.00 for each month. As a result, the landlord seeks to recover lost rent from the tenants for a total amount of \$3,900.00. The landlord also seeks to recover the returned cheque fees for August and September, 2013 only, for a total amount of \$40.00 as required by the written tenancy agreement signed by the landlord and tenant which was provided as evidence.

Analysis

The tenant failed to attend the hearing or provide any written submissions prior to this hearing taking place. In the absence of the undisputed testimony and evidence provided by the landlord's agent, I make the following determination.

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 complied with the requirements of the *Act*. As a result, I accept that the tenant was served by the landlord with the notice to end tenancy on August 2, 2013 in accordance with Section 88(e) which allows for a document to be served by leaving it at the rental unit with an adult who apparently resides with the tenant.

As a result, the tenant had until August 28, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenant did. As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended as per the notice, and therefore the landlord is entitled to an Order of Possession.

In relation to the monetary claim, I award the landlord the outstanding rent for the months of August and September, 2013. Since the tenant is still occupying the rental suite and has not paid rent for October, 2013, I also award the landlord unpaid rent due for October, 2013. Therefore the landlord is awarded a total of \$3,900.00 in rent arrears.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. The tenancy agreement provided by the landlord as evidence indicates that the tenant will be charged \$20.00 for returned cheques. Therefore, I find that the landlord is entitled to these fees in the amount of \$40.00 claimed.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant 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 \$3,990.00. As the landlord already holds \$650.00 in a 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 \$3,340.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. 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 **\$3,340.00**. 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: October 21, 2013

Residential Tenancy Branch

