



# 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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession or unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:13 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent testified that his colleague posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 10:30 a.m. on December 20, 2013. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on December 23, 2013, the third day after its posting. The agent testified that a copy of the landlord's dispute resolution hearing package was sent to the tenant by registered mail on January 8, 2014. The agent provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the dispute resolution hearing package on January 13, 2014, the fifth day after its registered mailing. The agent also testified that a copy of the landlord's written evidence was handed to the tenant on January 28, 2014. I am satisfied that the landlord served the written evidence to the tenant as claimed.

At the commencement of the hearing, the agent asked that the landlord's requested monetary award of \$3,160.00 be increased to \$4,730.00, to reflect the tenant's failure to pay rent of \$1,570.00 for February 2014. The landlord's monetary award request has been increased to \$4,730.00, as requested at this hearing.

The landlord testified that the landlord's written evidence was provided to the Residential Tenancy Branch (RTB) on January 30, 2014. As this evidence had not been attached to the information provided to me, I asked the landlord to fax a copy of the 10 Day Notice and relevant portions of the Residential Tenancy Agreement between the parties by 4:00 p.m. on the day of the hearing. Shortly after the completion of the hearing, the RTB received the requested information from the landlord by fax. I have considered this information in reaching my decision.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy began as a one-year fixed term tenancy on November 1, 2011. At the expiration of that fixed term tenancy, another one was signed on November 1, 2012, followed by a third one-year fixed term tenancy that began on November 1, 2013. Monthly rent is set at \$1,570.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$775.00 security deposit and \$775.00 pet damage deposit, both paid on September 21, 2011.

The agent testified that the tenant has not paid anything to the landlord since the landlord issued the 10 Day Notice. The landlord requested a monetary award of \$1,570.00 for each of December 2013, January 2014, and February 2014. The landlord also requested reimbursement of \$20.00 for NSF cheques issued by the tenant.

#### Analysis

The tenant failed to pay the December 2013 rent in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 4, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed testimony, I find that the landlord is entitled to a monetary award of \$1,570.00 for each of December 2013, January 2014 and February

2014. I dismiss the landlord's request for reimbursement of NSF fees without leave to reapply as the landlord produced insufficient evidence that this term was part of the Residential Tenancy Agreement or that the landlord actually incurred these costs.

Although the landlord's application does not seek to retain the tenant's security and pet damage deposits (the deposits), using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain unpaid rent and the filing fee and to retain the deposits:

Item	Amount
Unpaid December 2013 Rent	\$1,570.00
Unpaid January 2104 Rent	1,570.00
Unpaid February 2014 Rent	1,570.00
Less Deposits (\$775.00 + \$775.00 = \$1,570.00)	-1,570.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$3,190.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 07, 2014

---

Residential Tenancy Branch

