



Dispute Resolution Services

Page: 1

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 CNR, RR, LRE, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for repair orders; and, to suspend or set conditions on the landlord's right to enter the property. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The landlord appeared and was represented at the hearing; however, the tenants did not appear.

Preliminary and Procedural Matters

The landlord's agent confirmed that the tenant's Application for Dispute Resolution had been served upon the landlord and that the landlord was prepared to respond to the tenant's Application. Since the tenants failed to appear I dismissed the tenants' Application without leave.

As to service of the landlord's Application for Dispute Resolution I was provided evidence that a registered mail package was sent to each tenant on February 13, 2016 but that Canada Post failed to deliver the mail. The landlord stated that an investigation has been launched with Canada Post but that it is believed the mail was lost in transit. Accordingly, the landlord re-sent the landlord's hearing documents to each of the tenants on February 27, 2016. Canada Post left notice cards for the tenants on March 1 and March 7, 2016 but the registered mail remains unclaimed. The landlord orally provided the registered mail tracking numbers for all four registered mail packages sent to the tenants and confirmed that the tenants continue to reside in the rental unit.

Taking into consideration that Canada Post failed to deliver the first sets of hearing documents to the tenants, due to no fault of the landlord, I found that the landlord acted reasonably and diligently by re-sending the hearing packages to the tenants even though it was outside of the time limit for serving an Application for Dispute Resolution. Also of consideration is that section 90 of the Act deems a person to have received

documents five days after mailing even if the person refuses to accept or pick up their mail. Accordingly, as provided in sections 71 and 90 of the Act, I accepted that mailing the hearing documents to the tenants for the second time on February 27, 2016 was sufficient and I deemed the tenants to be sufficiently served with the landlord's Application five days after mailing. Therefore, I proceeded to hear from the landlord without the tenants present.

During the hearing the landlord requested the Monetary Order be amended to include loss of rent for March 2016. Having heard the tenants continue to occupy the rental unit I found the landlord's request non-prejudicial and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced May 1, 2015 and was set to expire on April 30, 2016. The tenants paid a security deposit of \$775.00 and are required to pay rent of \$1,550.00 on the first day of every month.

The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on February 26, 2016. The tenants filed to dispute the Notice but the tenant's Application to cancel the 10 Day Notice has been dismissed for reasons already in this decision. The 10 Day Notice submitted by the tenants is a Notice to End Tenancy in the approved form that has been signed and dated by the landlord, and indicates the reason for ending the tenancy, the rental unit address, and provides an effective date.

The landlord affirmed that the tenants did not pay the outstanding rent after the 10 Day Notice was posted and the landlord has not received any rent for the months of January through March 2016.

In addition to receiving an Order of Possession, the landlord seeks to obtain a Monetary Order for unpaid rent for January and February 2016 plus loss of rent for March 2016 since the tenants continue to occupy the rental unit.

Documentary evidence provided for my consideration includes copies of: the 10 Day notice; Proof of Service of the 10 Day Notice; the tenancy agreement; and, text messages exchanged between the tenant and the owner of the property.

Analysis

Section 55 of the Act provides, in part:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[reproduced as written]

In this case, the tenants filed to dispute a 10 Day Notice to End Tenancy and the tenants' Application was dismissed. Upon review of the 10 Day Notice submitted as evidence by both parties I am satisfied that the 10 Day Notice meets the form and content requirements of section 52 of the Act. Accordingly, I am satisfied that the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession. The Order of Possession shall be effective two (2) days after service upon the tenants.

Upon review of the tenancy agreement, I find the tenants were obligated to pay rent of \$1,550.00 on the first day of every month for a fixed term set to expire April 30, 2016. I accept the undisputed evidence of the landlord that the tenants failed to pay rent for January 2016 and February 2016 and I award the landlord unpaid rent in the sum of \$3,100.00. Since the tenants did not pay the outstanding rent or vacate the rental unit pursuant to the 10 Day Notice and continued to occupy the rental unit I further find the landlord entitled to recover loss of rent in the sum of \$1,550.00 for the month of March 2016.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for the landlord's Application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: January and February 2016	\$3,100.00
Loss of Rent: March 2016	1,550.00
Filing fee	100.00
Less: security deposit	<u>(775.00)</u>
Monetary Order	\$3,975.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The tenants' Application has been dismissed and the landlord is provided an Order of Possession effective two (2) days after service.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$3,975.00 to serve and enforce upon the tenants.

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: March 15, 2016

Residential Tenancy Branch