



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXSAVE REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF (Tenants' Application)
 OPR, MNR, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants Application for Dispute Resolution, filed January 15, 2018, they sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 8, 2018 (the "Notice") and recovery of the filing fee. The Landlord sought an Order of Possession and Monetary Order based on the Notice as well as to recovery the filing fee paid.

The hearing was scheduled for teleconference at 9:00 a.m. on March 12, 2018. Only the Landlord's representative, L.S., called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

L.S. testified that she received an email at 12:22 a.m. from the Tenant, A.G. wherein he wrote that they have "accepted the end of the tenancy" and will be moving out as of March 12, 2018. L.S. stated that when she drove by it was not clear whether they were still in the rental unit or not.

As the Tenants failed to call into the hearing, service of the Landlord's Application material was considered. L.S. further testified that she served the Tenants with the Notice of Hearing and the Application on February 15, 2018 by registered mail. A copy of the registered mail tracking numbers for the packages sent to each Tenant is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of February 20, 2018 and I proceeded with the hearing in their absence.

Preliminary Matter—Tenants' Application

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenants did not call into the hearing and the Landlord's representative appeared and was ready to proceed, I dismiss the Tenants' claim without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

L.S. testified that this tenancy began July 6, 2017 and that the monthly rent was \$1,400.00 payable on the first of the month. The Tenants paid a security and pet damage deposit equal to one full month's rent.

The Tenants failed to pay rent for the month of December 2017 and January 2018. As a result, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on January 8, 2018 indicating the amount of \$2,800.00 was due as of January 1, 2018.

Based on the testimony of L.S., I find that the Tenant A.G. was personally served with the Notice on January 8, 2018.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, January 13, 2018. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants applied for Dispute Resolution on January 15, 2018, however as they failed to call into the hearing their application is dismissed.

L.S. confirmed that the Tenants also failed to pay rent for February or March 2018 such that at the time of the hearing the sum of \$5,600.00 is owed for rent.

The Landlord sought authority to retain the security deposit and pet damage deposit in the amount of \$1,400.00 towards the outstanding amount.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenants have not paid the outstanding rent and their application to dispute the Notice is dismissed.

Pursuant to section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

Pursuant to section 55(1) of the *Residential Tenancy Act*, **I grant the Landlord an Order of Possession** effective **two (2) days** after service on the Tenants. The Landlord must serve the Order on the Tenants and may file and enforce the Order in the B.C. Supreme Court.

I also find that the Landlord has established a total monetary claim of \$5,700.00 comprised of \$5,600.00 in outstanding rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security and pet damage deposit of \$1,400.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$4,300.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and their application to dispute the Notice is dismissed.

The Landlord is granted an Order of Possession, may keep the security and pet damage deposit in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 12, 2018

Residential Tenancy Branch