Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

a)   A monetary order pursuant to Section 67;

b)   An Order of Possession pursuant to Sections 46, and 55;

c)   An Order to retain the security deposit pursuant to Section 38; and

d)   An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend the hearing. The landlord gave sworn evidence that the Notice to end Tenancy dated January 8, 2014 was posted on the door and the Application for Dispute Resolution was served by registered mail. It was verified online that delivery was attempted on January 31, 2014 and a Notice was left. After a final notice on February 13, 2014, it was returned to the sender. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act whether or not he chose to pick up the registered mail.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated January 8, 2014 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The tenant did not attend although served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The evidence is that the tenancy commenced on December 1, 2010, a security deposit of $390 was paid and rent is currently $843 a month. The landlord claims $958 in rental arrears for January 2014 and part of December 2013. She said the tenant made a payment in February and was given a receipt for "use and occupancy only" so the tenancy was not reinstated; he also owes another month now but it was not

claimed on the Application. The landlord requests an Order of Possession effective as soon as possible and to retain the security deposit to offset the amount owing. The tenant did not submit any documents to dispute the amount owing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis
Order of Possession
I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

Monetary Order
I find that there are rental arrears in the amount of $958 representing rental arrears for January 2014 and part of December 2013. Although the landlord wanted to amend the Application to add the rent owing for March 2014, I find that this was not claimed in the Application or on the Notice. As the tenant has had no notice of this claim, it would be contrary to the principles of natural justice to add the amount in his absence. The landlord is at leave to reapply within the limitation period for further amounts owing.

Conclusion:
I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover their filing fees.
Calculation of Monetary Award:

Rent arrears as claimed	958.00
Filing fee	50.00
Less security deposit (no interest 2010-14)	-390.00
Total Monetary Order to Landlord	618.00

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 12, 2014

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Residential Tenancy Branch