



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTY CANADIAN LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on January 19, 2015. Canada Post tracking numbers were provided by the landlord's agent in sworn testimony. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord's agent testified that this month to month tenancy started on November 01, 2014. Rent for this unit is \$1,400.00 per month and is due on the 1st of each month. The landlord's agent testified that the tenants failed to pay the rent due for January, 2015, of \$1,400.00. The landlord issued a 10 Day Notice to End Tenancy (the Notice) for unpaid rent. This was served to the tenants on January 02, 2015 by posting it to the tenants' door. The Notice stated that the tenants owe rent of \$1, 425.00 which was due on January 01, 2015. The landlord's agent testified this consists of unpaid rent and a \$25.00 late fee as provided for under the tenancy agreement. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 14, 2015.

The landlord testified that the tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord testified that on February 02, 2015 Welfare paid the tenants' rent for February. The landlord will notify the tenants that this is for use and occupancy only. Due to this the landlord's agent agreed to extend the effective date of the Notice and seeks an Order of Possession for February 28, 2015.

The landlord requested a Monetary Order to recover the unpaid rent of \$1,400.00, the late fee of \$25.00 and the filing fee of \$50.00.

Analysis

Section 26 of the Residential Tenancy Act (Act) states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, as the tenants have failed to attend the hearing to dispute the landlord's claim I am satisfied from the documentary evidence before me that the tenants have

failed to pay rent for January, 2015. The landlord is entitled to recover these rent arrears and will receive a Monetary Order to the sum of **\$1,400.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$25.00 for late fees for January, 2015; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for a fee of \$25.00 for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$25.00** in late fees for January, 2015.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice stated that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice; however, as the landlord has accepted rent for February, 2015 then the landlord's agent agreed the tenants could remain in the unit until February 28, 2015. I therefore grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant, pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,475.00** comprised of unpaid rent, late fee and the filing fee. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service upon the Respondents. This Order must be served on the Respondents. If the Respondents fail to comply with this Order, the Order may be filed in the Supreme Court 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: February 05, 2015

Residential Tenancy Branch

