



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent, NB ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he was the building manager for this rental building and that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on June 24, 2015, by way of registered mail. The landlord provided a copy of a Canada Post receipt and tracking number with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on June 29, 2015, five days after its registered mailing.

The landlord testified that he served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 12, 2015 ("10 Day Notice"), by way of

posting it to the tenant's rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on June 15, 2015, three days after its posting.

The landlord confirmed that he wished to amend the landlord's Application to correct the legal name of the landlord company named in this Application. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's Application to correct the landlord company's name, which is now correctly reflected in the style of cause on the front page of this decision.

Issues 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 and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on April 7, 2015 for a fixed term to end on April 30, 2016 after which it would transition to a month-to-month tenancy. Monthly rent in the amount of \$840.00 is payable on the first day of each month. A security deposit of \$420.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit, as he spoke with the tenant at the beginning of July 2015, the tenant indicated his desire to continue residing in the rental unit, and the landlord discussed this Application with the tenant. The landlord provided a copy of the written tenancy agreement for this hearing.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,512.00 was due on June 1, 2015. The notice indicates an effective move-out date June 26, 2015. The landlord indicated no payments have been made by the tenant since the 10 Day Notice was issued.

The landlord seeks a monetary order of \$2,352.00 for unpaid rent and provided a monetary order worksheet for this amount with its Application. The landlord indicated that rent of \$232.00 is unpaid for April 2015, as the tenant only made a payment of

\$440.00 on April 1, 2015 towards the total prorated rent of \$672.00 from April 7 to 30, 2015. The landlord stated that rent of \$440.00 is unpaid for May 2015, as the tenant only made a payment of \$400.00 on May 6, 2015 towards the total rent of \$840.00. The landlord indicated that rent of \$840.00 is unpaid for each of June and July 2015, as the tenant did not make any payments towards rent.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on June 26, 2015, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 26, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,512.00, the amount indicated on the 10 Day Notice, from April to June 2015. Therefore, I find that the landlord is entitled to \$1,512.00 in rental arrears for the above period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused a loss of rent for July 2015.

The tenant was required to vacate the rental unit by June 26, 2015, the effective date on the 10 Day Notice. As per the landlord's evidence, the tenant continues to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$840.00 was due on July 1, 2015. Therefore, I find that the landlord is entitled to \$840.00 in rental arrears for the entire month of July 2015, despite the fact that this hearing was held on July 17, 2015. I make this finding because the landlord may have to serve the tenant with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and possibly advertise and attempt to re-rent the unit.

The landlord continues to hold the tenant's security deposit of \$420.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$420.00 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 the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 in the amount of \$1,982.00 against the tenant as follows:

Item	Amount
Unpaid April 2015 Rent	\$232.00
Unpaid May 2015 Rent	440.00
Unpaid June 2015 Rent	840.00

Loss of July 2015 Rent	840.00
Less Security Deposit	-420.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,982.00

The landlord is provided with a monetary order in the amount of \$1,982.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 17, 2015

Residential Tenancy Branch

