



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities, loss of rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

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

Background and Evidence

The parties participated in a previous dispute resolution proceeding on May 14, 2013 to deal with the tenant's request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on April 4, 2013. The tenant's application was dismissed and the Arbitrator found that the 10 Day Notice would stand. The tenants continue to reside in the rental unit. By way of this Application, the landlord has requested an Order of Possession be provided to the landlord based upon the above described 10 Day Notice.

In filing this Application the landlord requested compensation of \$1,950.00 and indicated in the details of dispute that the monetary claim included rent up to and including June 2013 and utilities of \$100.00.

The tenant agreed that they owe the landlord \$1,950.00 for months up to and including June 2013, as claimed on the landlord's Application.

The landlord indicated that the actual amount of rent owing as of this date was actually greater at \$2,285.00 plus utilities of \$120.00 for a sum of \$2,405.00. This landlord explained that this balance reflects the monthly rent, plus a gas surcharge, less partial payments rent payments made since July 2012. The landlord did not provide a copy of a ledger or the tenancy agreement in the evidence provided for this hearing.

Documentary evidence I was provided for this hearing was a copy of the decision issued for the previous dispute resolution hearing of May 14, 2013 and the 10 Day Notice issued April 4, 2013.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, the tenants filed to dispute the 10 Day Notice dated April 4, 2013; however, their request to cancel the Notice was dismissed and the Arbitrator found that the 10 Day Notice stands. Shortly after receiving the Arbitrator's decision the landlord filed this Application seeking an Order of Possession; thus, I am satisfied the landlord did not act in such a way as to reinstate the tenancy.

In light of the above, I am satisfied the tenancy has come to an end based upon the 10 Day Notice issued April 4, 2013 and since the tenants continue to reside in the rental unit, I find the landlord is entitled to an Order of Possession as requested. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

With respect to the landlord's monetary claim, the landlord bears the burden to establish the amount owed by the tenants for rent and utilities as the landlord is the applicant in this matter. Given the tenant agreed that \$1,950.00 was owed, as indicated by the landlord on the Application, and in the absence of other documentary evidence to establish the tenants owed a greater amount, I find insufficient evidence to find the tenants owe the landlord more than \$1,950.00. Therefore, I award the landlord \$1,950.00 as claimed.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

The landlord is provided a Monetary Order calculated as follows:

Unpaid and/or loss of rent and utilities	\$ 1,950.00	
Filing fee		50.00
Less: security deposit		<u>(525.00)</u>
Monetary Order		\$ 1,475.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,475.00 to serve and enforce as necessary.

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: June 27, 2013

Residential Tenancy Branch

