



Dispute Resolution Services

Page: 1

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: MNR OPR CNR FF

Introduction:

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

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated November 27, 2013 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or has the tenant demonstrated that they paid the rent and the Notice to End Tenancy for unpaid rent should be set aside?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on September 1, 2013, that rent is \$820 a month and a security deposit of \$410 was paid on August 15, 2013.

The landlord issued a 10 day Notice for unpaid rent of \$820 in November 2013. They said the tenant paid rent for December 2013 and was issued a receipt to clearly show they were not reinstating the tenancy by accepting the rent. The tenant contends he paid the rent in November. He explained that he gets funds from the Ministry issued to the landlord for \$410 a month; he said his room mate moved out and when he realized her portion of rent was not paid, he went to the landlord and arranged for the Ministry payment that came at the end of November to be credited to his November rent, rather than for December. He provided computer printouts of his Ministry account showing that \$410 was issued to the landlord in November and another \$410 in December. The landlord was unable to find a record of the November Ministry cheque in their records and said they would have to investigate. The tenant subsequently paid his December rent in full and received a receipt as testified by the landlord. The tenant agreed that he has still not paid his January rent as he said he was waiting for the result of this hearing.

After discussion, the parties agreed to settle as follows:

Settlement Agreement:

1. The tenant will pay the full rent of \$820 plus \$25 late fee (total \$845) to the landlord by January 29, 2014 and the tenancy will be reinstated.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement and a registered mail receipt.

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

Analysis

The onus is on the applicant landlord to prove on a balance of probabilities that the tenant did not pay rent for November. I find the landlord has not satisfied the onus. The landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent. In the absence of any records in evidence that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that he paid rent for November 2013 as it is supported by Ministry records. The landlord was unable to account for the cheque sent by the Ministry in November 2013 which was clearly shown in the computer records of the Ministry. Therefore, I set aside the Notice to End Tenancy. The tenancy is reinstated.

As the landlord was unable to show clearly the amount owed, I find they are not entitled to a monetary order for an uncertain amount of rent owing.

Although the tenant submitted that the landlord should be restricted from issuing another 10 day Notice to End Tenancy for unpaid rent in January before January 29, 2014 when he intends to pay the rent as promised, I find that the landlord has a legal right to issue such a Notice as rent for January was due on the first day of the month.

Conclusion:

I dismiss the application of the landlord in its entirety and I find they are not entitled to recover filing fees for their application.

The Notice to End Tenancy dated November 27, 2013 is hereby set aside and cancelled. The tenancy is reinstated.

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: January 09, 2014

Residential Tenancy Branch

