



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Raamco International Properties Canada
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MT, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord named the female tenant as the sole Respondent in the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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 tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female tenant (the tenant) confirmed that she received the 10 Day Notice posted on her door on March 5, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with the landlord's 10 Day Notice on March 8, 2014, the third day after its posting. As the tenant submitted her application to cancel the 10 Day Notice on March 11, 2014, I find that she was within the five day time period for seeking a cancellation of the 10 Day Notice. As such, there is no need to consider her application for more time to make her application to cancel that Notice.

The landlord's agent (the landlord) confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on March 12, 2014. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 25, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the parties were deemed

served with one another's dispute resolution hearing packages on the fifth day after their registered mailing. Based on the sworn testimony of the parties, I am also satisfied that the landlord served the tenant with the landlord's written evidence in accordance with the *Act*. The tenant did not enter any written evidence for this hearing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? 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

This one-year fixed term tenancy beginning on July 15, 2013 is scheduled to end on July 31, 2014. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the \$500.00 security deposit for this tenancy paid on July 5, 2013.

The landlord's original application for a monetary award of \$3,749.44 included a request for \$3,249.44, the amount identified as owing in the landlord's 10 Day Notice for unpaid rent owing for December 2013, January 2014, February 2014 and March 2014. In the original application, the landlord also requested authorization to add \$500.00 to the above amount from the tenant's security deposit. Before the landlord submitted the application for dispute resolution to the Residential Tenancy Branch (the RTB), the landlord added another \$1,100.00 for anticipated loss of rent for April 2014, totalling \$4,894.44.

The tenant did not dispute the landlord's claim that she had not paid her rent in full within 5 days of receiving the 10 Day Notice. She said that she was in the process of locating new accommodations and that she was hopeful of vacating the rental unit within 72 hours of this hearing. While she did not dispute the landlord's claim that rent was owing for her tenancy and admitted that she had not paid any rent for March or April 2014, she maintained that the amount sought by the landlord was more than she owed.

The tenant said that she never paid her rent by cheque as was maintained by the landlord. She testified that she always paid cash in the mail slot of the landlord's resident manager. She said that until this individual became seriously ill and lapsed into a coma, she received written receipts for her cash rent payments. While she said that she never paid her rent by cheque, she testified that the Ministry of Social Development

made two shelter payments by cheque for December 2013 and for January 2014. She alleged that tenants in her building were not advised that the resident manager had changed until January 21, 2014. By then, she maintained that she had been putting cash in the former manager's door for an additional two months. The tenant also testified that she was unaware that there were amounts owing from her tenancy until the landlord issued her the 10 Month Notice seeking \$3,249.44 in unpaid rent.

Although the tenant said that she had a witness who saw her put one or more of these cash payments in the mail slot of the former resident manager, she was unable to locate this individual when I allowed her to walk to another rental unit in this building to see if this witness was available. Later in the hearing, the tenant said that her 14 year old also witnessed her placement of cash in the former resident manager's mail slot and had returned home from school. Due to the age of the youth and the circumstances surrounding her claim of cash payments, I saw little value in allowing her to call her child as a witness, as it did not appear that such testimony from a minor of this age would be of any probative assistance to the tenant's position.

Analysis

Based on the evidence before me, I find that the tenant has not disputed the landlord's claim that she has not paid all of the rent owing for this tenancy within five days of receiving the 10 Day Notice. The tenant has not vacated the rental unit by March 18, 2014, the effective date identified in the 10 Day Notice. While I have given the tenant's sworn testimony careful consideration, I give little weight to her assertion that she placed cash payments in a mail slot for which she received no written receipts.

Although this may have been her practice, this is by no means a secure way of paying monthly rent, especially when disputes arise as to whether payments were or were not made. Under these circumstances, I find that the tenant has not submitted sufficient evidence to demonstrate that all of her monthly rent has been paid. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the female tenant. If the tenant and anyone on the premises do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Turning to the landlord's claim for a monetary award, I note that the landlord's agent testified that she did not take over management of this rental property until January 21, 2014. Although she entered into written evidence an extensive assortment of rent receipts, and summaries of deposits made from the tenant's cash payments, the landlord had very little first-hand knowledge of the payments made and owing for this tenancy. For example, when the tenant questioned who issued the multiple cheques

cited in the landlord's rent ledger for this tenancy, the landlord said that she did not know who the cheques were from referred to in these ledgers.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The *Act* also requires tenants to pay rent when it is due.

Based on the evidence before me, I find that the most reliable and supportable evidence with respect to the amount owing provided by the landlord was the amount cited in the 10 Day Notice. This Notice showed \$3,249.44 owing as of March 5, 2014, and specifically noted that this amount was for unpaid rent owing from December 2013 through to March 2014. At the hearing, I noted that the landlord had misinterpreted the provisions allowing a landlord to retain a security deposit by adding the tenant's \$500.00 security deposit to the amount claimed, rather than the correct procedure of subtracting this amount from the unpaid rent claimed. When the landlord became aware of this error in her submission, she quickly reviewed her evidence and asked for compensation of \$400.00 in unpaid rent owing from September 2013.

While I have given the landlord's requests for unpaid rent owing prior to December 2013 due consideration, I find that the landlord's knowledge of the circumstances prior to December 1, 2013 was so limited that the landlord is not entitled to a monetary award for these months. In this regard, I accept that the tenant was making periodic cash payments in the landlord's mail slot, which generally, but perhaps not always resulted in the former manager's issuance of rent receipts. The landlord did not include any mention of additional rent owing in the 10 Day Notice beyond the \$3,249.44 identified in that Notice for the period from December 2013 until March 2014. If additional rent were owing for periods prior to December 2013, I would expect that the landlord should have been able by March 5, 2014 to have included these amounts in the 10 Day Notice and subsequently in the landlord's application for dispute resolution. I find the landlord's attempt to recover additional amounts owing prior to December 1, 2013 at the hearing, as more in the nature of trying to remedy the landlord's error in incorrectly adding the security deposit to the landlord's claim.

For the reasons outlined above, I find that the landlord is entitled to recover unpaid rent of \$3,249.44 owing as of March 5, 2014, and a further \$1,100.00 for April 2014. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the female tenant, the Respondent in the landlord's application. Should the female tenant and 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 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application from the female tenant and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owing as of March 5, 2014	\$3,249.44
Unpaid Rent Owing for April 2014	1,100.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,899.44

The landlord is provided with these Orders in the above terms and the female tenant, the Respondent in the landlord's application, must be served with this Order as soon as possible. Should the female tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 01, 2014

Residential Tenancy Branch

