



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 cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on July 9, 2014, seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on June 13, 2014, seeking an Order to cancel the notice to end tenancy for unpaid rent and to obtain a Monetary Order.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on July 9, 2014 at 2:35 p.m.

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the *Act* and despite having her own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord testified that the parties entered into a written fixed term tenancy agreement that began on September 1, 2013 and was set to expire on August 31, 2014. Rent was payable on the first of each month in the amount of \$1,100.00 and on July 19, 2013, the Tenant paid \$550.00 as the security deposit.

The Landlord submitted that when the Tenant failed to pay the June 1, 2014 rent in full she posted a 10 Day Notice to the Tenant's door on June 6, 2014 for \$960.00 of unpaid rent plus \$25.00 for a late payment fee. Since issuing the 10 Day Notice the Tenant has made two payments, \$650.00 was paid on July 2, 2014 and \$685.00 was paid August 1, 2014.

The Landlord stated that she wishes to proceed with her request for an Order of Possession and a Monetary Order for the unpaid rent and loss of rent for July and August 2014.

Analysis

Given the evidence before me, in the absence of testimony from the Tenant who did not appear despite this hearing being convened to hear matters for her own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored and no one on behalf of the Applicant Tenant called into the hearing during this time.

Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on June 9, 2014, three days after it was posted to her door, and the effective date of the Notice is **June 19, 2014**, in accordance with section 90 of the Act.

The Tenant did not pay the rent in full within the required time period and despite her filing an application to dispute the Notice, she failed to appear at the teleconference hearing and her application was dismissed. Based on the foregoing, and upon review of the evidence before me, I find the Landlord has met the burden of proof to uphold the 10 Day Notice. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord made application for unpaid rent of \$335.00 for June 2014 rent (\$960.00 rent plus \$25 late fee, less \$650.00 paid on July 2, 2014), pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

The Tenant made a second payment on August 1, 2014 of \$685.00 which paid off the June 2014 outstanding balance in full and left a credit of **(\$350.00)**. Accordingly, I dismiss the Landlord's claim for June 2014 unpaid rent.

Use and Occupancy and Loss of Rent As noted above this tenancy ended **June 19, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent for July and August 2014, not rent. The Tenant is still occupying the

unit which means the Landlord will not regain possession until after service of the Order of Possession and then they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of July and August 2014, in the amount of \$2,200.00 (2 X \$1,100.00).

Filing Fee \$50.00- The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest, and the credit balance, as follows:

Use and Occupancy and Loss of Rent	\$2,200.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,250.00
LESS: Credit balance	-350.00
Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$1,350.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,350.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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: August 11, 2014

Residential Tenancy Branch

