



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTER PROP CDA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's agent, D.M. and his assistant, S.M., (collectively referred to as the "Landlord") appeared at the hearing. Both D.M. and S.M. provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and their Application on November 19, 2014 by posting to the rental unit door. Under the Act documents served this way are deemed served three days later; accordingly, I find the Tenant was duly served as of November 22, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The Tenancy began on April 1, 2014 and the monthly rent was \$870.00 payable on the first of the month. In addition

to rent, the Tenant was to pay a \$10.00 monthly surcharge for gas, which was added to the rental such that the Tenant agreed to pay \$880.00 per month in "total rent and fees". Pursuant to paragraph 10 of the residential tenancy agreement the Tenant also agreed to pay \$25.00 as a late fee.

The Tenant failed to pay rent for October 1, 2014 and on October 5, 2014 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued (the "Notice").

Based on the testimony of D.M., I find that the Tenant was served with the Notice on October 5, 2014 by posting to the door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of October 8, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 13, 2014. As October 13, 2014 is Thanksgiving Day and a holiday, the date automatically moves to October 14, 2014. The Notice also explains the Tenant had five days from the date of service, October 14, 2014, to dispute the Notice by filing an Application for Dispute Resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows. The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Tenant also did not pay rent for November 2014 and as such the Landlord is entitled to recover the \$25.00 late fee for October and November 2014.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$1,860.00 comprised of:

- October 2014 rent and fees \$880.00
- October 2014 late fee \$25.00
- November 2014 rent and fees \$880.00
- November 2014 late fee \$25.00

TOTAL rent, fees and late fees \$1,810.00

and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$440.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1,420.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 01, 2014

Residential Tenancy Branch

