



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAAMCO INT. PROP. CAN LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPR, MNR, FF

### **Introduction**

This hearing is being held to deal with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order based on a 10-Day Notice to End Tenancy for Unpaid Rent. The matter was already determined through the Direct Request process. However, the tenant applied for a review and a new participatory hearing was granted scheduled for today.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

### **Issue to be determined**

Is the landlord entitled to an order of possession and monetary order?

### **Preliminary Issue**

The landlord testified that the Ten Day Notice to End Tenancy for Unpaid Rent had been served to the tenant by registered mail sent on September 11, 2014. The landlord provided the Canada Post tracking information which showed that a printed card was left at the tenant's address, but the registered mail was never picked up by the tenant.

I note that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

(a) if given or served by mail, on the 5th day after it is mailed; (my emphasis)

I find that a Notice mailed on September 11, 2014, is deemed to have been received on September 16, 2014.

However, the tenant testified that the Ten Day Notice to End Tenancy for Unpaid Rent was never served on them at all. The tenant testified that they received a card for registered mail to be picked up, but this card had the name of a different individual. The tenant pointed out that the surname on the card was not the same as the tenant's.

The landlord was able to show that they had correctly addressed the package containing the Ten Day Notice to End Tenancy for Unpaid Rent using the tenant's proper surname. A copy of the landlord's tracking slip is in evidence.

However, the Canada Post printout and card left at the address documenting the package availability featured a different surname. A copy of this card is in evidence. This appears to be a spelling error on the part of the Post Office in typing the name of the notification card.

Although I accept that the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent in compliance with section 88 of the Act, I find that the tenant has successfully rebutted deemed service by proving that the Notice card left by Canada Post was incorrectly addressed to another name.

Given the above, I find that the tenant was deprived of the opportunity to dispute the 10-Day Notice or pay the amount of arrears within 5 days to cancel the Notice.

### Background and Evidence

Notwithstanding the fact that the tenant did not receive the 10 Day Notice to End Tenancy for Unpaid Rent the parties testified that the tenant is currently in arrears in the amount of \$250.00 for rent.

### Analysis

Section 46(5) of the Act provides that if a tenant does not pay the rental arrears within 5 days or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

However, in the case before me, I find that this section does not apply to the tenant because the 10 Day Notice to End Tenancy for Unpaid Rent was not properly served on the tenant. I find that the landlord's request for an order of possession must therefore be dismissed.

Section 62(1)(b) of the Residential Tenancy Act grants an arbitrator the authority to determine any matters related to the dispute that arise under this Act or agreement and section 62(2) of the Act states that an arbitrator may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act. Section 62(3) of the Act states that an arbitrator may make any order necessary to give effect to the rights obligations and prohibitions under this Act.

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

In this instance both parties have confirmed that the tenant is currently in arrears for \$250.00 in rent owed to the landlord.

Based on the above facts, I find that the landlord is entitled to a monetary order in the amount of \$300.00 comprised of \$250.00 outstanding rental arrears and the \$50.00 cost of the application. This order must be served on the tenant and may be enforced through Small Claims Court.

### **Conclusion**

The landlord is partly successful in the application. The request for an order of possession is dismissed as the 10-Day Notice was not served on the tenant and a monetary order for rental arrears is granted in favour of the landlord.

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: December 09, 2014

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Residential Tenancy Branch

