



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADA LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 21, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that the documents sent to the Tenant on October 21, 2015 were returned to the Landlord by Canada Post with documentation that indicates the package was refused by the recipient. A party cannot avoid service of documents by refusing to accept registered mail.

The Agent for the Landlord stated that on October 26, 2015 the package that was returned to the Landlord by Canada Post was posted on the door to the rental unit.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from November and December of 2015. I find that it was reasonable for the Tenant to include that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- The Tenant moved into the rental unit on September 21, 2014;
- when this tenancy began the Tenant agree to pay monthly rent of \$1,120.00 by the first day of each month;
- the rent was increased to \$1,145.00, effective October 01, 2015;
- the Tenant paid a security deposit of \$565.00;
- the Tenant did not pay any rent for September, October, November, or December of 2015;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 10, 2015, was posted on the door of the rental unit on October 02, 2015;
- the Ten Day Notice to End Tenancy that was posted declared that the Tenant owed \$2,265.00 in rent that was due on October 01, 2015; and
- he believes the rental unit was vacated by November 27, 2015.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,120.00 by September 01, 2015 and \$1,145.00 by October 01, 2015, which the Tenant has not paid. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,265.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on October 02, 2015.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on October 05, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on April 11, 2016 I find that the earliest effective date of the Notice was October 15, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was October 15, 2015.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on October 15, 2015, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between October 15, 2015 and October 31, 2015, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must also compensate the Landlord for the 27 days in November the Tenant remained in possession of the rental unit, at a daily rate of \$38.17, which equates to \$1,030.59.

The Landlord has not applied for compensation for lost revenue and I have not, therefore, granted compensation for lost revenue for any period after the rental unit appears to have been vacated.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. In the event there is any doubt the rental unit has been vacated, this Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$3,345.59, which is comprised of \$3,295.59 in unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$656.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,780.59. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: December 17, 2015

Residential Tenancy Branch

