



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 FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 25, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord's agent, N.B. (the "agent"), provided affirmed testimony at the hearing. The tenant did not attend the hearing.

The agent testified that he sent the Notice of Hearing along with supporting documentary evidence to each of the tenants on August 25, 2017, by registered mail. I find the tenants received this package on August 30, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent testified that monthly rent was \$870.00 up to and including June of 2017. He further testified that rent was increased, as per the Notice of Rent Increase, to \$875.00 as of July 1, 2017. The agent testified that monthly rent is payable in advance on the first of the month.

The agent testified the following with respect to accruals and payments:

- the tenants failed to pay June rent of \$870.00.
- on July 1, 2017, another \$875.00 was due but the tenants only paid \$1,000, leaving a balance of \$745.00.
- on August 1, 2017, another \$875.00 was due but the tenants only paid \$495.00, leaving \$1,125.00 unpaid (as of August 2, 2017)
- the tenants paid \$795.00 on August 21, 2017
- on September 1, 2017, another \$875.00 was due for rent and the tenants paid \$875.00 on that day.

As specified in the tenancy agreement, there is a late fee of \$25.00 for late payment of rent and the agent is requesting \$25.00 late rent fees for the months where there was a balance outstanding (June, July, August, September). The agent testified that the tenants have also failed to pay for their electrical utility bill for the last few months. The agent explained that the tenants are responsible for paying for their own electrical utility, as per the tenancy agreement, and the bill is in their name. The agent further explained that when the electrical utility is not paid by the tenants, the landlord will eventually be liable for this bill, should it remain unpaid. The agent testified that the city has been sending him notices to show that the tenants have failed to pay their electrical utility for multiple months and they now owe \$156.92, as of September 5, 2017.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice), which was posted to the tenant's door on August 21, 2017. At the top of the 10 Day Notice, the agent specified that the tenants owed \$1,125.00 in rent, and \$106.97 in utilities at the time the notice was issued, on August 21, 2017. As per the Proof of Service Document, service of the 10 Day Notice was witnessed by a third party.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice,

the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, although the tenants have paid some money towards their accumulated balance of rent owing, I find that there was still a balance of unpaid rent at the time the 10 Day Notice was issued on August 21, 2017. The landlord issued the 10 Day Notice by posting it to the door of the rental unit on August 21, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the tenants are deemed to have received the 10 Day Notice on August 24, 2017.

The tenants had 5 days (until August 29, 2017) to pay rent in full or file an application for dispute resolution. Although the tenants paid \$795.00 on August 21, 2017, I find there was still a balance of rent owing at the end of the 5 day period. Payments are summarized further in the table below. Given that the tenants did not pay their accrued debt, in full, within 5 days of receiving the note, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The effective date of the 10 Day Notice is September 3, 2017, which is 10 days after the tenants received the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the agent's request for a Monetary Order for unpaid rent and utilities. With respect to the agent's request to be compensated for the electrical utilities, I find that he has not provided sufficient evidence to show that the unpaid utilities are currently the landlord's responsibility. The evidence before me suggests that the electrical bills are still in the tenants' name, and although it appears the tenants are behind in paying their electrical bill and the agent has been notified of such, the responsibility to pay the outstanding balance still remains with the tenants. I acknowledge that, should the tenants continue not to pay their electrical utility bill, the landlord may be required by the city to pay the balance. However, I find the agents claim for compensation for unpaid electrical utilities is premature, as it has not been clearly established that the balance is currently their responsibility. As such, I dismiss the agent's request for compensation for unpaid utilities with leave to reapply.

With respect to the remainder of the agent's application for monetary compensation for rent, I find as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
June 1, 2017	Rent Due	\$870.00	\$0.00	\$870.00
July 1, 2017	Rent Due	\$875.00	\$1,000.00	\$745.00
August 1, 2017	Rent Due	\$875.00	\$495.00	\$1,125.00
August 21, 2017	Tenant Payment		\$795.00	\$330.00
September 1, 2017	Rent Due	\$875.00	\$875.00	\$330.00
PLUS:	LATE RENT FEE			
	(June, July, Aug, Sep)	\$25.00 x4	\$0.00	\$100.00

Total Accrued Balance	\$430.00
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I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$430.00 in past due rent and late fees. Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee the landlord paid to make the application for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$530.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$530.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 25, 2017

Residential Tenancy Branch