



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR FFL

Introduction

On October 18, 2018, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*,
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the cost of the filing fee for this application from the tenants.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:14 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agents M.H. and S.A. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As the tenants did not attend the hearing, I asked the landlord to confirm that they had served the tenants with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that both tenants were individually served with the notice of this hearing, and the Interim Decision dated October 18, 2018, by Canada Post registered mail on October 25, 2018. The landlord provided two registered mail tracking numbers as proof of service (noted on the cover sheet of this Decision). The landlord testified that the tracking report indicated that both packages were returned “unclaimed”.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or ‘deemed’ received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was deemed served with the notice of this hearing on October 30, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Application to Amend Landlord’s Original Application for Dispute

On November 15, 2018, the landlord applied for an Amendment to their original Application for Dispute Resolution filed on October 12, 2018. The landlord applied to add to its original claim a second 10 Day Notice to End Tenancy for Unpaid Rent (herein referred to as the “second 10 Day Notice”) dated November 15, 2018, and to increase the original monetary claim of \$705.00 to \$1,792.50. The landlord testified that the second 10 Day Notice dated November 15, 2018 and the Amendment application was served together in one package to the tenants by sliding it under the rental unit door.

Sections 88 and 89 of the *Act* set out the permissible methods of service for documents. Neither of these sections permit service of documents by sliding under the door. As such, I find that the landlord failed to serve the second 10 Day Notice dated November

15, 2018 and Amendment application in accordance with the Act, therefore, I dismiss the landlord's request to amend its original Application in this matter.

Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent dated September 5, 2018?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence confirming the following terms of this tenancy:

- This month-to-month tenancy began on May 1, 2006.
- Monthly rent is payable on the first of the month. The amount of monthly rent was \$910.00 until the latest rent increase which took effect on November 1, 2018 increasing the current monthly rent to \$930.00 payable on the first day of the month.
- The landlord currently holds a security deposit of \$195.00 paid by the tenants at the beginning of the tenancy.

The landlord testified that a portion of the tenants' monthly rent, \$382.50, was paid directly to the landlord on behalf of the tenants from government shelter assistance support payment.

At the hearing, the landlord testified that as of September 1, 2018, the landlord had received the tenants' shelter assistance payment of \$382.50, and a payment of \$400.00 from the tenants towards the \$910.00 monthly rent. This calculates to \$127.50 in rental arrears owed by the tenants.

On September 5, 2018, the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (herein referred to as the "10 Day Notice"). The

landlord submitted into documentary evidence a Proof of Service signed by a witness to the landlord's service of this document.

The landlord submitted into documentary evidence a copy of the 10 Day Notice dated September 5, 2018, which provides the amount of rent owed by the tenants to be \$177.50 as of September 1, 2018. I note that there is a discrepancy between the documentary evidence submitted by the landlord and the verbal testimony provided by the landlord at the hearing regarding the exact amount of rent owed by the tenants as of September 1, 2018.

The landlord testified that they received the government shelter assistance support payment of \$382.50 towards the October 2018 rent, but that the tenants did not make any rent payment towards the remaining \$527.50 owed for October 2018 rent. Further to this, the tenants remained in rental arrears for a portion of September 2018 rent. The landlord testified that no receipts were issued to the tenants as the tenants did not make any rent payment in October 2018, rather the landlord only received direct payment of rent from government assistance on behalf of the tenants.

The landlord testified that they did not receive any rent payment from the tenants for November 2018, and although the landlord received the \$382.50 government shelter assistance support payment for November 2018 they did not deposit the cheque as they received a telephone call from the government ministry responsible for these payments advising the landlord that the tenants had advised them they had moved out of the rental unit.

The landlord testified that they are unsure whether or not the tenants still reside in the rental unit as all their belongings are still in the rental unit and therefore they are requesting an Order of Possession to gain access to the rental unit and address food and garbage left behind in the rental unit that is attracting pests. The landlord testified that they were advised by BC Hydro that the electricity was disconnected on November 6, 2018.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Section 26 of the *Act* requires 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.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the testimony of the landlord and the submitted documentary evidence, I find that the tenants were obligated to pay monthly rent in the amount of \$910.00 by the first day of the month, as established in the written tenancy agreement and associated rent increases, and that the tenants failed to pay the full amount of rent for the month of September 2018.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I note that the 10 Day Notice submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch within five days.

I accept the landlord's testimony and documentary evidence that the tenants were personally served with the 10 Day Notice on September 5, 2018.

I accept the testimony provided by the landlord that the tenants did not pay the full amount of rent owed for the month of September 2018 nor did the tenants apply to dispute the 10 Day Notice within five days of receiving the notice, as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. This required the tenants to vacate the premises by September 18, 2018. As that has not occurred, and the effective vacancy date has passed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenants.

Although the landlord has applied for a monetary award of \$705.00 for unpaid rent, I find that due to the discrepancy between the landlord's testimony and documentary evidence regarding the exact amount of rent owed by the tenants for September 2018, the landlord has not provided sufficient evidence of the actual amount of rent owed by the tenants. Therefore, the landlord's claim for a monetary award for unpaid rent is dismissed.

As the landlord was partially successful in this Application, I find the landlord is entitled to recover the cost of the \$100.00 filing fee for this application from the tenants. As the landlord continues to hold the tenants' \$195.00 security deposit, I order that the landlord retain \$100.00 of the tenants' security deposit in satisfaction of recovery of the filing fee for this Application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days** after service of the Order on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a Monetary Order for unpaid rent is dismissed due to insufficient evidence provided to establish the actual amount of rental arrears.

I order the landlord to retain \$100.00 from the tenants' security deposit in satisfaction of the landlord's entitlement to recover the cost of the filing fee from the tenants.

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 3, 2018

Residential Tenancy Branch