



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 OPC, MNRL-S, FFL

Introduction

In this dispute, the landlord seeks compensation for unpaid rent under section 67 of the *Residential Tenancy Act* (the “Act”), an order of possession under sections 49 and 55 of the Act, and recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on April 15, 2020 and a dispute resolution hearing was held, by way of telephone conference, at 9:30 AM on June 2, 2020. The landlord’s agent (the “landlord”) attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; the tenants failed to attend. According to the landlord “they moved out yesterday afternoon.”

Regarding service of the Notice of Dispute Resolution Proceeding package, the landlord testified that he served this by way of e-mail on April 18, 2020. I note that service by e-mail is permitted under Ministerial Order No. M089, [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020, during the provincial state of emergency. Further, a copy of an e-mail exchange between the parties confirms that the tenants received the package. Based on this evidence I find that the tenants were served in compliance with the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony has been included in this Decision.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on December 1, 2019 and is, or was, a fixed-term tenancy ending November 30, 2020. Monthly rent is \$1,650.00 (which includes parking and other fees of \$55.00) which is due on the first of the month, and there is a security deposit of \$825.00. A copy of a written tenancy agreement was submitted into evidence.

On March 9, 2020, the landlord served a One Month to End Tenancy for Cause (the "Notice") on the tenants for repeatedly paying rent late and indicating that the tenancy would end on April 30, 2020. The Notice provided that the tenants had the right to dispute the Notice within ten days, which appears they did not. The landlord requests an order of possession.

Rent arrears total \$6,820.00, representing unpaid rent for February, March, April, and May 2020, and the landlord seeks a monetary order for this amount, including an order permitting them to retain the tenants' security deposit in partial satisfaction of any award granted. In addition, the landlord seeks \$100.00 for the filing fee.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Regarding the Notice, which the tenants did not dispute within the ten-day period, section 47(5) states that

(5) If a tenant who has received a notice under this section does not 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 by that date.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the tenants did not dispute the Notice within ten days. Therefore, they are conclusively presumed to have accepted that the tenancy ended on April 30, 2020. Pursuant to section 55(4) of the Act I thus grant the landlord an order of possession.

Regarding rent, section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. I note that the tenants did not dispute the Notice nor is there any evidence that they had any legal right to withhold rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenants have not paid for four months, from February to May 2020, inclusive, for a total of \$6,820.00. Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$6,820.00 for unpaid rent.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the filing fee of \$100.00 for a total monetary award of \$6,920.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenants’ security deposit of \$825.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$6,095.00, representing the balance of the award, is granted to the landlord.

Conclusion

I HEREBY GRANT THE LANDLORD:

1. an order of possession, which must be served on the tenants (if necessary) and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia, subject to the current restrictions set out on the order.
2. a monetary order in the amount of \$6,095.00, which may be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord must serve a copy of the order on the tenants and may file the order in the Provincial Court of British Columbia for enforcement and collection.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 2, 2020

Residential Tenancy Branch