



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INT'L PROPERTIES CANADA
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR PSF FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2022 (10 Day Notice), for an order directing the landlord to provide services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenant and an agent for the landlord, BO (agent) attended the teleconference hearing. The parties were affirmed and both parties were permitted to ask questions. The tenant confirmed that they received the documentary evidence from the landlord and had the opportunity to review that evidence. The tenant confirmed that other than the tenancy agreement, they did not submit any documentary evidence. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

At the outset of the hearing, and by consent of the parties, the landlord name was changed from the agent, BO to the landlord corporate company name, RIPCL. This amendment was made pursuant to section 64(3) of the Act.

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and the tenant's application to recover the cost of the filing fee at this

proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply.**

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2020 and converted to a month-to-month tenancy as of February 28, 2021. Monthly rent is \$1,600.00 per month and is due on the first day of each month. While the agent first stated rent was \$1,650.00 per month, I find the Tenant Ledger (Ledger) submitted only indicates that rent is \$1,600.00 per month.

A copy of the 10 Day Notice was submitted and indicates that \$3,200.00 was owed as of March 1, 2022. The 10 Day Notice is dated and signed and was dated March 10, 2022 with an effective vacancy date of March 25, 2022. The agent stated that there was a partial payment made but that as of the date of the hearing, June 27, 2022, the tenant now owes a total of \$6,350.00. The Ledger supports that \$6,350.00 is owed of June 1, 2022.

The tenant claims the co-tenant vacated in November 2021 but is unsure of a specific date and claims the co-tenant has all the paperwork regarding the rent payments. The tenant was asked about payments made since November 2021, and the tenant claims they were paid via their own debit but did not submit any paperwork to support that. The tenant also alleged that Information Services staff could not assist the tenant due to "legal advice", which the tenant was advised Information Services staff does not provide, they provide information and guide participants through the dispute resolution process. The tenant also claims they were not told about submitting evidence, which is also what Information Services staff assist participants with and there is a link to all the required information on the Notice of Dispute Resolution Hearing (Notice of Hearing) document given to both parties.

The tenant then asked when the other portion of their claim would be discussed, and I reminded the tenant that it was already severed at the start of the hearing as noted above.

The tenant was asked if they understood that by not paying April, May or June 2022 rent at all, that the tenancy would be ending, and the tenant confirmed they understood.

At this point in the hearing, the tenant's application was dismissed due to insufficient evidence of rent paid and given the landlord's Ledger which supports that \$6,350.00 in

rent arrears is owing, and that the tenant failed to pay \$3,200.00 within 5 days of March 10, 2022, when they received the 10 Day Notice to address rent arrears.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I have reviewed the 10 Day Notice and find it complies with section 52 [*form and content of notice to end tenancy*]. Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the 10 Day Notice within five (5) days.

When a 10 Day Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent. I have reviewed the Ledger provided by the agent that supports that as of the date of the hearing, the tenant continues to occupy the rental unit and owes a total of \$6,350.00 in rent arrears.

I find the tenant's testimony not to be credible as the tenant first claimed they did not have access to previous receipts and then when directly asked why the debit documents were not provided from November 2021 to present the tenant claims they did not know how to upload them into the Dispute Management System (DMS) and that an Information Officer advised the tenant that they could not assist them. I find both scenarios to be highly unlikely as an Information Officer are there to assist parties to answer questions about how to upload evidence and other questions related to dispute resolution in general. Also, there are links to online assistance in the Notice of Hearing provided to the applicant, which must then be served on the respondent. Given the above, I find none of the tenant's evidence reliable.

There was no documentary proof supplied by the tenant to support that debit payments were made for monthly rent for the months claimed by the landlord.

Order of Possession -

Upon hearing from the parties, for the reasons already given, I find that the tenant owed the landlord rent when the 10 Day Notice was issued and that the tenant failed to pay the \$3,200.00 amount owing within 5 days of March 10, 2022. The effective vacancy date listed on the 10 Day Notice was March 25, 2022, which has passed. I therefore find the landlord submitted sufficient evidence to support the 10 Day Notice. As a result, I find the tenancy has ended for the tenant's failure to pay rent owed and the landlord is entitled to gain possession of the rental unit.

I therefore **dismiss** the tenant's application seeking cancellation of the 10 Day Notice. The tenant ought to have paid the monthly rent, as they did earlier in the tenancy.

I find the tenancy ended on March 25, 2022, the effective date of the 10 Day Notice. As the tenant failed to vacate the rental unit, I find that landlord has not reinstated the tenancy and that I grant the landlord an order of possession for the rental unit effective **2 days after service upon the tenant**, as no money has been paid for April, May or June of 2022, pursuant to section 55(1)(b) of the Act.

Monetary order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owed but did not pay the outstanding monthly rent listed on the 10 Day Notice and failed to submit debit records to support that the tenant owed less than what is listed on the Ledger, which indicates \$6,350.00 owing as of June 27, 2022, the date of the hearing.

Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[emphasis added]

Pursuant to section 55(1.1) of the Act, I make the following order:

I ORDER the tenant to pay the landlord the amount of \$6,350.00, which is the amount of total unpaid monthly rent as of the day of the hearing.

As a result, I grant the landlord a final, legally binding monetary order against the tenant for the amount of \$6,350.00 in unpaid rent arrears.

I do not grant the filing fee as the tenants' application has failed.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The tenancy ended on March 25, 2022.

The portion of the tenants' application that was severed, is dismissed with leave to reapply.

The landlord has been granted an order of possession of the rental unit effective two (2) days after service on the tenant, which must be served on the tenant by the landlord. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The tenant is cautioned that costs of such enforcement are recoverable from the tenant.

The landlord is granted a monetary order in the amount of \$6,350.00 comprised of unpaid rent owed by the tenant through the date of the hearing. This order must be served on the tenant by the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant is cautioned that costs of such enforcement, including bailiff fees, are recoverable from the tenant.

The decision will be emailed to the tenant and landlord.

The orders will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 27, 2022

Residential Tenancy Branch