



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENNYFARTHING MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, ET ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager and that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with a 10 Day Notice for Unpaid Rent or Utilities, dated January 13, 2015 ("10 Day Notice"), on the same date, by way of registered mail. The tenant confirmed receipt of the 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution hearing package ("Application") on February 17, 2015, by way of registered mail. The tenant confirmed receipt of the landlord's Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Both parties agreed that this month to month tenancy began on July 1, 1988. Monthly rent in the current amount of \$2,719.00 is payable on the first day of each month. Both parties agreed that monthly rent under the tenancy agreement was initially \$1,650.00 per month. A security deposit of \$825.00 was paid by the tenant on June 30, 1988 and the landlord continues to retain this deposit. A written tenancy agreement was provided with the landlord's Application. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$2,742.00 was due on January 1, 2015. Both parties agreed that the tenant owes unpaid rent of \$417.00 for January 2015. Both parties agreed that the tenant owes unpaid rent of \$2,719.00 for each of February and March 2015. Both parties agreed that the tenant owes \$25.00 in NSF fees for returned cheques for each of January and February 2015.

At the outset of the hearing, the landlord withdrew his application to recover \$3,827.25 from the tenant, for an awning replacement deposit.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord the total amount of \$417.00 in full satisfaction of rent for January 2015, by no later than March 11, 2015;
2. The tenant agreed to pay the landlord the total amount of \$5,488.00 by no later than March 31, 2015, in full satisfaction of rent for February and March 2015 (totaling \$5,438.00) and in full satisfaction of all NSF fees (totaling \$50.00) for January and February 2015;
3. Both parties agreed that this tenancy will continue in the event that the tenant abides by conditions #1 and 2 of the above monetary settlement. In that event, the landlord agreed to withdraw the 10 Day Notice, dated January 13, 2015;
4. Both parties agreed that this tenancy will end by 1:00 p.m. on April 10, 2015, by which time the tenant will have vacated the rental unit, only if the tenant does not abide by conditions #1 and 2 of the above monetary settlement;
5. The landlord agreed to withdraw his application to recover the \$100.00 filing fee from the tenant.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to abide by conditions #1 and 2 of the above monetary settlement **and** if the tenant and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on April 10, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not abide by conditions #1 and 2 of the above monetary settlement **and** the tenant and any other occupants do not vacate the premises by 1:00 p.m. on April 10, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In the event that the tenant abides by conditions #1 and 2 of the above monetary settlement, I find that the landlord's 10 Day Notice, dated January 13 2015, is cancelled and of no force or effect. In that event, this tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the *Act*.

In order to implement the above settlement and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$5,905.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by conditions #1 and 2 of the above monetary settlement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with conditions #1 and 2 of the above monetary settlement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to recover the \$100.00 filing fee from the tenant for this Application, is withdrawn. The landlord must bear the cost of its own filing fee.

As this tenancy is currently continuing as per the above settlement agreement, the landlord's application for authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, is dismissed with leave to reapply.

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: March 11, 2015

Residential Tenancy Branch

