



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENAKO HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, for a monetary order for unpaid rent, and to recover the filing fee from the tenant.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 1, 2015.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Preliminary matter

At the outset of the hearing the landlord’s agent indicated that they are not seeking an order of possession or a monetary order as the tenant has paid their outstanding rent and they have agreed to continue the tenancy. The agent stated that they seek to recover the cost of the filing fee.

Issue to be Decided

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord's agent testified that the tenant failed to pay rent for September 2015, and was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 5, 2015. The agent stated that the tenant paid the amount of \$280.00 on September 9, 2015, leaving an outstanding balance of \$420.00, when they filed their application on September 28, 2015.

The landlord's agent stated their application has merit and they seek to recover the \$50.00 filing fee.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I am satisfied that the tenant breached section 26 of the Act, when they failed to pay rent. The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant was required to pay rent in full within 5 days or dispute the notice within 5 days. The tenant did not do either, and as a result the landlord filed their application for dispute resolution.

Although the landlord has resolved the issue of unpaid rent and reinstated the tenancy, I find the landlord is entitled to recover the filing fee, as their application when filed had merit.

I find that the landlord has established a total monetary claim of **\$50.00** to recover the filing fee from the tenant and I grant the landlord an order under section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord was not seeking an order of possession or a monetary order for unpaid rent. The landlord is granted a monetary order to recover the cost of the filing fee from the tenant.

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: November 06, 2015

Residential Tenancy Branch

