



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, FF; MT, CNR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 5, 2016 ("10 Day Notice"), pursuant to section 66; and
- cancellation of the landlords' 10 Day Notice, pursuant to section 46.

The landlord, DD ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the resident manager for the landlord company named in this application and that she had authority to speak on its behalf at this hearing (collectively "landlords").

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlords' 10 Day Notice on May 5, 2016. The notice indicates an effective move-out date of May 15, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on May 5, 2016.

Preliminary Issue – Tenant's Application for More Time to Make an Application to Cancel the 10 Day Notice

Section 66(3) states the following:

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As per section 66(3) of the *Act*, I dismiss the tenant's application for more time to make his application to cancel the 10 Day Notice. The tenant filed his application on May 17, 2016, when the effective date of the notice was May 15, 2016.

As the tenant applied late to cancel the notice, I dismiss his application to cancel the 10 Day Notice. Accordingly, I find that the 10 Day Notice complies with section 52 of the *Act* and I grant the landlords a two (2) day order of possession against the tenant pursuant to section 55 of the *Act*.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2014. Monthly rent in the amount of \$720.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The landlords issued the 10 Day Notice indicating that unpaid rent of \$720.00 was due on May 1, 2016.

The landlords seek a monetary order of \$1,440.00 from the tenant. Both parties agreed that the tenant did not pay rent totalling \$1,440.00 from May to June 2016. The landlords also seek to recover the \$100.00 filing fee for their application from the tenant.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties agreed that the tenant failed to pay rent totalling \$1,440.00 from May to June 2016. Therefore, I find that the landlords are entitled to \$1,440.00 in rental arrears from the tenant.

The landlords continue to hold the tenant's security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$350.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for their Application.

Conclusion

I grant an order of possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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.

I issue a monetary order in the landlords' favour in the amount of \$1,190.00 against the tenant. The tenant must be served with this Order as soon as possible. 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 tenant's entire application is dismissed without 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: June 30, 2016

Residential Tenancy Branch

