Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Loon Properties Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- recovery of the filing fee.

The landlord's agents (agents) attended the hearing; however, the tenant did not attend.

Agent LV stated she served the tenant with their Application for Dispute Resolution, the available evidence, and Notice of Hearing (application package) on June 16, 2020, by email attachment. The agent said they used the email address used by the parties for communication during the tenancy. The agents additionally said they had discussed the dispute resolution matter and issues with the tenant and he was aware of the hearing.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with the Director's Order made on March 30, 2020, in effect at the time of service.

The agents were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of February 1, 2017, a fixed term through January 31, 2020, monthly rent of $1,696.00, due on the 1st day of the month, and a security deposit being transferred from another rental unit. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord submitted that the tenancy is ongoing.

The landlord submitted that the tenant failed to pay the full amount of monthly rent for April, May and June 2020, and owed a rent deficiency of $3,568.00 as of June 2, 2020.

The agents submitted the rent deficiency increased through August 2020, as permitted during the moratorium on rent payments as the result of the Ministerial Order made due to the Covid-19 state of emergency.

The agents submitted that the tenant has been given a repayment plan for the outstanding rent deficiency incurred from April to August 2020, with the first payment of $421.50 being due on October 1, 2020. The agents said that the tenant has complied with the plan and has made the first payment due and the **amount left owing on the repayment plan is $3,793.50**. Filed into evidence was the repayment plan.

The agents testified that the tenant additionally owed, but did not pay storage of $300, parking for $1,050, and utilities charges of $438 due under separate agreements, for a total of $1,788. Filed into evidence were the separate agreements.

The agents testified that the total amount owed for unpaid rent, storage, parking, and utilities by the tenant as of the day of the hearing is $5,581.50.

The agents submitted that they understood that any monetary order granted to them, as to the portion of the outstanding rent deficiency of $3,793.50, is subject to the repayment plan.

The agents said they did not intend to act on any monetary order as they are working with the tenant in his efforts to make payments. The agents confirmed they did not want to use the tenant's security deposit in partial satisfaction of any monetary order granted.

The landlord's additional relevant evidence included tenant ledger sheets, a utility statement, and notices of rent increases.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

As the tenant failed to attend the hearing despite being properly served, I consider this application to be unopposed.

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, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In this case however, despite this provision of the Act, on July 30, 2020, the *COVID-19 Regulation* went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the declaration of the state of emergency made on March 18, 2020 expires or is cancelled. This Regulation can be accessed through:

https://www.bclaws.ca/civix/document/id/crbc/crbc/195_2020

Under this Regulation, the rent due during this emergency period is known as the "affected rent".

Section 1.02 of the *COVID-19 Regulation* requires that a landlord must give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan.

In connection with the *COVID-19 Regulation,* Residential Tenancy Policy Guideline 52 was enacted.

Under this Guideline, "affected rent" is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020.

Guideline 52, Section E states that an arbitrator may grant a monetary order, but it will be subject to the terms of the repayment plan. The order will set out that the tenant must pay the unpaid affected rent in accordance with the repayment plan.

Under the Rules, a landlord may amend their application at the hearing in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made.

I therefore allowed the landlord to increase their monetary claim to include the unpaid rent incurred through the date of the hearing.

Upon hearing from the landlord's agents and considering their documentary evidence, I find the tenant owed the remaining amount of $3,793.50 for affected rent deficiency incurred during the specified period of April through August 2020. That amount is subject to the repayment plan on which the tenant has already started to make payments.

I further find the landlord submitted sufficient evidence to support that the tenant owed under separate agreements, but did not pay the parking charge of $1,050, the unpaid storage charge of $300, and the unpaid utility charge of $438, or a total of $1,788.

I grant the landlord recovery of their filing fee of $100, due to their successful application and pursuant to section 72(1) of the Act.

Conclusion

I issue a monetary order in the landlord's favour in the amount of $5,681.50 under the following terms:

ITEM	AMOUNT
1. Unpaid affected rent (inc. in repayment plan)	$3,793.50
2. Unpaid parking	$1,050.00
3. Unpaid storage	$300.00
4. Unpaid utility	$438.00
5. Filing fee	$100.00
TOTAL MONETARY ORDER	**$5,681.50**

The amount of $3,793.50 is subject to the repayment plan issued by the landlord to the tenant. Should the landlord ever seek enforcement of the monetary order, any payments received will be applied to the outstanding affected rent. [*My emphasis*]

The tenant is cautioned that if the tenancy ends prior to the unpaid affected rent being paid in full according to the repayment plan, the monetary order will no longer be subject to the terms of the repayment plan and any amount left owing will be due and payable in full.

The landlord is provided with this order in the above terms.

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: October 13, 2020

_____
Residential Tenancy Branch