Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, MNRL-S, FFL

Introduction

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

- 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;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of $22,825.33 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:14 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. Landlord FE attended the hearing, as did the landlords' son ("**AE**") and two agents ("**GP**" and "**MS**"). They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that FE, AE, GP, MS, and I were the only ones who had called into this teleconference.

GP testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on September 25, 2020. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on September 30, 2020, five days after GP mailed it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Order of Possession

On October 16, 2020, the parties attended a hearing on an application of the tenant to dispute a notice to end tenancy. The tenant was unsuccessful, and the presiding arbitrator ordered that the tenancy was ended and issued an order of possession. GP testified that the tenant vacated the rental unit on October 18, 2020. As such, the landlord no longer requires the order of possession sought in this application. I dismiss this portion of the landlords' application, without leave to reapply.

Preliminary Issue – Amendment of Application

Among their evidence submitted to the RTB evidence portal was an amendment to application form (the "**Amendment**"). This amendment was not filed with the RTB in advance of the hearing.

GP testified that the tenant did not provide a forwarding address to the landlords after vacating the rental unit, and that the landlords did not know where he moved to. GP testified that, as such, he emailed the Amendment and its supporting evidence to the tenant at an email address the landlord used to communicate the tenant during the tenancy. The landlords did not provide a copy of the email into evidence.

At the hearing, I permitted the landlords to upload a copy of the email to RTB website, but as of the end of the hearing, the email did not appear in the RTB evidence portal.

I note that service by email is not an authorized form of service under the Act. However, section 71(2)(c) of the Act permits an arbitrator to deem that a document not served in accordance with the Act is sufficient served or given for the purposes of the Act.

This is a discretionary power granted to an arbitrator. At the hearing, I did not have access to the email which purportedly served the Amendment on the tenant. As such, I was not satisfied that the tenant had notice of the Amendment. Accordingly, I declined to accept the amendment and will not consider the claims contained therein.

Following the hearing, the email which purported to serve the Amendment on the tenant appeared in the RTB evidence portal. It reads, in its entirety:

> **From:** [GP]
> **Sent:** Thursday, December 24, 2020 6:35 PM
> **To:** [tenant]
> **Subject:** FW: File# [redacted]: Support Docs for [rental unit] - Follow-up Docs for the Hearing
>
> Hi [tenant]
>
> Attached is additional information for our hearing on January 15th.
>
> Regards

The email appears to have been copied and pasted into a word document, so I cannot tell what documents were attached to this email. I also note that the language used in the email does not indicate thar the document(s) attached change the nature of the

landlords' application. An amendment to an application is more than a "follow-up" document.

As such, even if I had received this email during the hearing, I would have declined to deem that the email represented effective service of the Amendment and its supporting evidence.

The landlords will have to make a further application if they want to obtain the relief sought in the Amendment.

I also note that, following the application, the landlords uploaded to the RTB evidence portal additional documents relating to the Amendment. I did not authorize any such uploads and have not considered these documents when making my decision. However, based on the file names of these documents, I can see that some of the documents were not previously provided to the RTB in advance of the hearing. I mention this point only for completeness of the record.

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $22,825.33;
2) recover the filing fee; and
3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords' agents, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2015. At the end of the tenancy, monthly rent was $3,980 plus utilities and was payable on the first of each month. The tenant paid the landlords a security deposit of $1,750 and a pet damage deposit of $1,750 (collectively, the "**Deposits**"), both of which are retained by the landlords.

GP testified that starting in February 2018, the tenant began to fall behind on his rent payments. The landlords submitted a detailed ledger setting out all credits and debits to the tenant's account. As of March 17, 2020, arrears were $6,330.59.

During the period of March 18, 2020 to August 17, 2020, the tenant incurred further rental arrears in the amount of $8,534.74. As this period of time was during the COVID-19 pandemic, per COVID-19 *(Residential Tenancy Act* and *Manufactured Home Park Tenancy Act)* (No. 2) Regulation (the "COVID Regulation"), rent arrears accrued during

this could be repaid by way of a repayment plan. On August 22, 2020, the landlords served a repayment plan on the tenant, which was entered into evidence.

GP testified that the tenant did not make any payment pursuant to the repayment plan. Additionally, he testified that the tenant did not pay any rent for September or October 2020 and is $7,960 in rent arrears for that period of time. As stated above, the tenant vacated the rental unit on October 18, 2020.

In total, the tenant is $22,825.24 in arrears as follows:

Arrears as of March 17, 2020	$6,330.59
Arrears from March 18 to August 17, 2020	$8,534.74
Arrears for September and October 2020	$7,960.00
Total	**$22,825.33**

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is owed. I accept GP's testimony, corroborated by the ledgers and the repayment plan entered into evidence, that the tenant is $22,825.24 in rental arrears. The tenant is obligated to repay this amount.

As the tenancy has ended and as the tenant has failed to make any of the payments pursuant to the repayment plan, the landlords are entitled to receive the full amount of arrears owing during time of March 18 to August 17, 2020. Accordingly, pursuant to section 67 of the Act, I order the tenant to pay the landlords $22,825.24.

Pursuant to section 72(1) of the Act, as the landlords have been successful in the application, they may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlords may retain the Deposits in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord $19,425.24, representing the following:

Arrears	$22,825.33
Filing Fee	$100.00
Credit for Deposits	-$3,500.00
Total	**$19,425.33**

I order that the landlords must serve the tenants with a copy of this decision and the attached order as soon as possible.

Based on the fact that the tenant has not provided a forwarding address to the landlords, and as the landlord has provided documentary evidence showing the email address of the tenant used to communicate with the landlord about the tenancy, per section 71(1) of the Act, I order that, for the purposes of this application, the tenant may be served via email at the address provided on the cover of this decision.

For added clarity, this substituted service order does not apply to any future proceedings initiated by the landlords against 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: January 15, 2021

Residential Tenancy Branch