



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FFL MNRL-S OPR

Introduction

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

- authorization to retain a portion of the tenant's security deposit in 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 \$23 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant FA attended the hearing on behalf of both tenants. The landlord was represented at the hearing by its secretary ("**RL**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

RL testified, and FA confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. FA testified that the tenants did not enter any documentary evidence to be relied on at this hearing. I find that the landlord served the tenants with the required documents in accordance with the Act.

Preliminary Issue – Amendment of Claim

At the hearing the landlord sought to further amend its application to include a claim for a portion of unpaid rent in December 2019 and January 2020 (\$23 per month) which RL testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord seeks compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for December 2019 and January 2020 arrears (\$46).

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$69;
- 2) an order of possession;
- 3) recover its filing fee; and
- 4) retain a portion of the security deposit in satisfaction of any monetary order made?

Background and Evidence

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

The tenants and the prior owner of the residential property (a multi-unit building which contains the rental unit) entered into a written tenancy agreement starting February 1, 2016. Subsequently, the prior owner sold the residential property to the current landlord, who is the applicant in this application. At the start of the tenancy, the tenants paid a security deposit of \$430 to the prior owner of the residential property. RL testified that the landlord now holds this deposit in trust for the tenants.

The parties disagree as to what the current monthly rent should be. On July 21, 2019, the landlord served the tenants with a Notice of Rent Increase, which purported to raise the monthly rent from \$925 (plus \$20 per month for parking) to \$948 (plus \$20 per month for parking). I note this is an increase of slightly less than the allowable increase of 2.5% (a 2.5% increase on \$925 would be \$23.12). The rent increase was effective November 1, 2019.

FA confirmed that he received the Notice of Rent Increase but testified that he did not agree to the rent increase. He testified, however, that the tenants have not filed an application to dispute this rent increase with the Residential Tenancy Branch. FA testified that he did not believe the landlord should be entitled to increase the rent because he believes they have not done a good job managing the residential property.

FA provided several examples of instances where, he argued, the landlord's management has been inadequate:

- 1) the landlord refused to repaint the interior of the rental unit;
- 2) the landlord refused to install a screen door on his patio;
- 3) the landlord has not adequately dealt with noise complaints;
- 4) the landlord has failed to repair the garage security system; and
- 5) mice came into the rental unit.

RL denied that the landlord had acted improperly with regards to these claims, and argued that, in any event, these claims are not relevant to the current application, which is concerned with rental arrears and an order of possession.

On November 1, 2019, the tenants paid the landlord monthly rent of \$945 (which includes \$20 for parking).

On November 2, 2019, the landlord served the 10 Day Notice to End tenancy (the "**Notice**") on the tenants, by putting it in their mail slot. FA confirmed receipt of the Notice. The Notice listed an effective date of November 12, 2019.

FA testified that the tenants did not pay the rental arrears within five days of receiving the Notice, or at all. He testified that the tenants did not dispute the Notice at the Residential Tenancy Branch either.

RL testified, and FA agreed, that the tenants paid monthly rent of \$945 (including \$20 for parking) on December 1, 2019 and on January 1, 2020. RL testified that the landlord accepted this rent for use and occupancy only.

Analysis

1. Notice of Rent Increase

Based on the testimony of the parties, I find that the Notice of Rent Increase was served on the tenants in accordance with Act. Section 42 of the Act relates to rent increases. It states:

Timing and notice of rent increases

42(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

I find that the Notice of Rent Increase was give at least three months before the effective date of the increase and was in the approved form. I find that the tenants rent had not been increased with the preceding 12 months.

I find that the tenants have not applied to dispute the Notice of Rent Increase.

As such, I find that the monthly rent is \$968 (including parking).

I find that the tenants have failed to pay the full amount of rent for the months of November and December 2019, and January 2020. I find that they are in arrears of \$69 (\$23 per month).

2. Notice to End Tenancy

Based on the testimony of the parties, I find that the Notice was served on the tenants in accordance with the Act.

Section 46(4) and (5) of the Act state:

Landlord's notice: non-payment of rent

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I find that the tenants neither paid the overdue rent or disputed the Notice within five days of receiving the Notice, or at all. Accordingly, pursuant to section 46(5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

As the tenants continue to reside in the rental unit, the landlord is entitled to an order of possession. As the tenants have paid, and the landlord has accepted, a large percentage of the monthly rent for January 2020, the tenants may remain in the rental unit until the end of January 2020. I order that the tenants provide the landlord with vacant possession of the rental unit by January 31, 2020 at 1:00 pm.

3. Rental Arrears

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenants failed to pay \$23 of the rent due for each of the months of November and December 2019, and January 2020. I find that the tenants are in arrears of \$69. As such, I order that the tenants pay the landlord this amount.

Pursuant to section 72(1) of the Act, as the landlord has been success in this application, I order that the tenants reimburse the landlord its filing fee (\$100).

Pursuant to section 72(2) of the Act, the landlord may deduct \$169 from the security deposit in satisfaction of the above-made monetary order. The landlord is reminded to deal with the balance of the security deposit in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenants provide the landlord with vacant possession of the rental on or before January 31, 2020 at 1:00 pm.

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 10, 2020

Residential Tenancy Branch