



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Achievers Group Holdings Ltd. 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; and
- recovery of the filing fee.

The landlord attended the hearing; however, the tenants did not attend.

The landlord stated he served each tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on May 2, 2020. The landlord provided the Canada Post Customer Receipts containing the Tracking Numbers to confirm this mailing. Those numbers are listed on the style of cause page in this Decision.

I accept the landlord's evidence that the tenants were served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his affirmed testimony 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 and or arguments are reproduced here; further, only the evidence specifically referenced by the landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord said that he attempted to amend his original monetary claim to account for the increased amount in unpaid rent and unpaid utility charges through the date of the hearing, by serving the tenants additional evidence.

While a landlord may normally amend their application at the hearing to include unpaid rent due since the date of the application, under Rule 4.2, I declined to amend their application.

The reasons for doing so are set forth hereafter in this Decision, and they relate to the unpaid rent and unpaid utility charges that became due during the State of Emergency declared in response to the Covid-19 pandemic.

The hearing proceeded on the landlord's original monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order due to unpaid rent and unpaid utility charges owed by the tenants and to recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of October 24, 2019, with a monthly rent of \$1,950, due on the first day of the month, and security deposit of \$975 being paid by the tenants.

The written tenancy agreement shows that the tenants were required to pay the water, sewer, and garbage collection costs, all assessed by the local city.

The tenancy is ongoing.

The landlord submitted that the tenants did not pay the full monthly rent for January, February, March and April and that they have never paid the utility charges owed under the written tenancy agreement. The landlord said that he submits each of the utility bills to the tenants, in a text message and attachment, with a request to pay.

The landlord's original monetary claim was \$1,533.36, which is the rent deficiency for January through April, 2020, for \$1,100, unpaid utility charges from November 2019 through February 2020, for \$289.36, and garbage and recycling for November 2019 through April 2020, for \$144.00. This claim was listed on the landlord's monetary order worksheet.

In addition, the landlord submitted that the tenants have not paid the monthly rent in full for the months of May, June, July and August 2020. The landlord said that he has been receiving supplement payments from outside sources, but they do not cover the full monthly rent.

In response to my inquiry, the landlord said that the tenants' rent deficiency for March 2020, was \$100 and for the unpaid utilities totalled \$409 through March.

The landlord said that since March, the tenants' rent deficiency for April through August 2020, is \$3,800, exclusive of the \$100 owed for March, and the total unpaid utilities is \$909, through the day of the hearing, which includes the amount of \$409 through March.

The landlord's relevant evidence included copies of the utility bills, spread sheets showing the accounting for the rent and utilities, and a monetary order worksheet.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In this case, the undisputed evidence is that the tenants owed but did not pay their full monthly rent for the months of January, February, March, April, May, June, July and August 2020. The tenancy is ongoing.

The undisputed evidence is that prior to March 18, 2020, the tenants owed but did not pay all their monthly rent for January, February, and March, leaving a total rent deficiency of \$1,100.

Additionally, I find the landlord submitted sufficient evidence that under the written tenancy agreement the tenants owed, and failed to pay, the utility charges in the amount of \$409 from the beginning of the tenancy through March 18, 2020. I find the landlord has established a monetary claim of \$409 for those unpaid utilities.

I therefore find that the landlord has established a monetary claim of \$1,509, comprised of a rent deficiency through March 18, 2020, in the amount of \$1,100, and unpaid utilities of \$409 through March 18, 2020.

I award the landlord recovery of their filing fee of \$100.

Rent and utility charges due from April through August, 2020 –

As to the remaining unpaid rent and unpaid utility charges, the months of April, May, June, July and August fell in the emergency period which began on March 18, 2020, in response to the Covid-19 pandemic, as declared in the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*), dated March 30, 2020. During this period, a landlord was not able to take action to collect rent or unpaid utility charges from a tenant, or issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or any other Notice to end the tenancy.

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 and utility charges due under the tenancy agreement 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 unpaid utility charges and

the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan. (*emphasis added*)

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

Under this Guideline, “affected rent” is defined as rent and utility charges that become 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 deals with the issues in this case, that is, the landlord’s application for a monetary order for unpaid affected rent, which include utility charges, made before July 31, 2020, where the tenancy is ongoing.

This section states that where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may assist the parties in completing a repayment plan that meets the requirements of the C19 Tenancy Regulation or dismiss the application with leave to reapply.

In this case, I find the tenants owed the affected rent, which included utility charges, from the specified period, or the months of April, May, June, July and August 2020, or a total of \$3,800 for unpaid rent and \$500 in utility charges, as established by the landlord’s undisputed evidence and testimony.

The landlord, however, has not provided the tenant with a repayment plan, as now required by Section 1.02 of the *COVID-19 Regulation*.

As such, I informed the landlord that he should issue the tenants a repayment plan prior to a future application claiming for the outstanding monthly rent and unpaid utility charges and that the repayment plan form is available on the Residential Tenancy Branch (RTB) website, RTB form 14 at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

The tenants are cautioned that beginning with September 2020, the monthly rent will be due and payable in full, as the “specified period” ended on August 17, 2020.

Conclusion

The landlord has established a monetary claim of \$1,609, comprised of the amount of the rent deficiency for January to March 18, 2020 in the amount of \$1,100, unpaid utility charges from the beginning of the tenancy through March 18, 2020 of \$409, and the filing fee of \$100.

Pursuant to section 67 of the Act, I grant the landlord a monetary order for \$1,609.

In the event the tenants do not voluntarily comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenants are cautioned that costs of enforcement are recoverable from the tenants.

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: August 25, 2020

Residential Tenancy Branch