



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord submitted two Applications for Dispute Resolution (the “Applications”); on May 18, 2020 and again on July 8, 2020, seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30 pm on September 21, 2020 as a teleconference hearing. Only the Landlord’s Agent appeared at the appointed date and time of the hearing. No one called in for the Tenant. The conference call line remained open and was monitored for 12 minutes before the call ended.

The Landlord’s Agent testified he failed to serve the Tenant with the Application package in relation to the Landlord’s first Application. As such, the Landlord resubmitted a new updated Application and served that Application package and documentary evidence to the Tenant via Canada Post Registered Mail on July 10, 2020. The Landlord provided copies of the Register Mail receipts in support.

Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on July 15, 2020, the fifth day after their registered mailing. The Tenant did not submit documentary evidence in response to the Application.

Preliminary Matters

At the start of the hearing, the Landlord’s Agent stated that he has a third Application submitted in relation seeking an order of possession as well as a monetary order relating to unpaid rent for September 2020. As such, I dismiss the portion of unpaid rent for the month of September 2020 from the Landlord’s current Application with leave to reapply.

The Landlord's Agent was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenant's security deposit, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent stated that the tenancy started on December 8, 2019. The Tenant is required to pay rent in the amount of \$1,600.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$800.00, which the Landlord currently holds. The Landlord's Agent stated that he is not sure if the tenancy has ended as he has not seen the Tenant for some time, however, the Tenant's guests continue to attend the rental unit.

The Landlord has applied for monetary compensation relating to unpaid rent for April, May, June, July and August 2020 in the amount of \$8,000.00. During the hearing, the Landlord's Agent stated that he has not yet formed a repayment plan with the Tenant. The Landlord's Agent stated that he has not seen the Tenant for some time, however, the Tenant's guests continue to attend the rental unit. If successful, the Landlord is seeking the return of the filing fee.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

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.

The *COVID-19 Related Measures Act* ("C19 Act") allows for regulations made under section 10.1 of the EPA to remain in force for up to one year after the C19 Act came into force (July 10, 2020). The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* ("C19 Tenancy Regulation"), was made under sections 10.1 and 10.2 of the EPA on August 14, 2020.

Sections 3 and 12 of the C19 Tenancy Regulation provide that a landlord must not give a tenant notice to end a tenancy in respect of **affected rent** that is unpaid under sections 44(1)(a)(ii) and 46 of the *Residential Tenancy Act* (RTA) and sections 37(1)(a)(ii) and 39 of the *Manufactured Home Park Tenancy Act* (MHPTA). Notices to end tenancy for affected rent may only be issued when the conditions set out in the C19 Tenancy Regulation have been met.

"Affected rent" means; 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.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a **prior agreement** has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required

Terms of Repayment Plan

The C19 Tenancy Regulation sets out that repayment plans must have the following terms:

1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
2. The payment of the unpaid affected rent must be in equal installments;
3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and
4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

In this case, the Landlord is claiming for unpaid rent for April, May, June, July and August 2020 in the amount of \$8,000.00. I find that these months constitute "affected rent". I accept that the Landlord and Tenant have not entered into repayment plan. I find that the tenancy has not yet ended in accordance with the Act.

In light of the above, I dismiss the Landlord's Application for monetary compensation relating to the unpaid affected rent from April, May, June, July and August 2020 in the amount of \$8,000.00.

The Landlord is required establish a repayment plan with the Tenant as outlined above as the tenancy is ongoing. Should the Tenant fail to abide by the terms of the

repayment plan or tenancy ends in accordance with the Act, the Landlord is at liberty to reapply for the outstanding balance of unpaid rent. As the Landlord was not successful with the Applications, the Landlord is not entitled to the return of the filing fee.

Conclusion

The Landlord is required to enter into a repayment plan with the Tenant for unpaid affected rent. The Landlord is at liberty to reapply for the unpaid rent should the Tenant fail to abide by the terms of the repayment plan, or if the tenancy ends in accordance with the *Act*.

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: September 25, 2020

Residential Tenancy Branch