Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for rent and/or utilities in the amount of $18,430.00, retaining the security deposit to apply to this claim; and to recover the $100.00 cost of their Application filing fee.

An agent for the Landlord, C.A. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant, although the Agent said that the Tenant continues to live in the rental unit The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on June 18, 2020. The Agent said that she also sent all Amendments to the Tenant via registered mail on September 23, 2020. The Agent provided Canada Post tracking numbers as evidence of service. I find that the Tenant

was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided her email address in the Application and in the hearing, she confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent submitted a tenancy agreement with the following details, which the Agent confirmed in the hearing. The fixed term tenancy began on September 1, 2019, running to August 31, 2020 and then operating on a month-to-month basis. The tenancy agreement said that the Tenant paid the Landlord a monthly rent of $2,285.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $1,150.00, and no pet damage deposit.

In her evidentiary submissions, the Agent uploaded photographs of monetary order worksheets, however, the Agent had not completed these forms by filling out the months in which the Tenant paid and owed rent throughout the relevant time period.

However, in the hearing, the Agent advised me of the amounts owing by the Tenant, which consists of the following amounts in this monetary order worksheet ("MOW"):

	Receipt/Estimate From	For	Amount
1	Tenant ledger	March rent unpaid	$1,095.00

2	“ “	March late fees	$25.00
3	“ “	April’s unpaid rent	$2,300.00
4	“ “	May’s unpaid rent	$2,300.00
5	“ “	June unpaid rent	$2,300.00
6	“ “	July unpaid rent	$2,300.00
7	“ “	August unpaid rent	$2,300.00
8	“ “	September unpaid rent	$2,300.00
9	“ “	October unpaid rent	$2,300.00
10	“ “	October unpaid repayment	$1,210.00
		Total monetary order claim	$18,430.00

The Agent said that the Tenant had a prepayment plan, but that he did not pay that portion of rent owing, either, as evidenced by item #10 in the above MOW.

While the Landlord did not submit a copy of the Repayment Plan, she indicated that one had been provided to the Tenant and that he had not made the first payment of this plan, as scheduled on October 1, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 67 of the Act states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the loss bears the burden of proof. Pursuant to RTB Policy Guideline #16, the claimant must prove the existence of the damage/loss, that it stemmed directly from a violation of the tenancy agreement or the Act on the part of the other party. Once

that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove on a balance of probabilities that the Tenant caused the loss.

RTB Policy Guideline #52 (“PG #52”), “COVID-19: Repayment Plans and Related Measures” states in part:

> This policy guideline addresses the COVID-19 pandemic and COVID-19 (Residential Tenancy and Manufactured Home Park Tenancy Act) (No. 2) Regulation made under the Emergency Program Act [“EPA”] and the COVID-19 Related Measures Act.
>
> A. LEGISLATIVE FRAMEWORK
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> . . .
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> Section 10.2 of the EPA provides for a regulation specifying that the failure to comply with a provision of a regulation made under section 10.1(1) is to be treated as though it were a failure to comply with the legislation to which that section 10.1(1) regulation relates.
>
> 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.
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> ‘Affected rent’ means
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> - 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, and
> - utility charges that become due to be paid by a tenant during the “specified period” between March 18, 2020 and August 17, 2020, if a tenancy agreement requires the tenant to pay utility charges to the landlord.
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> The “specified period” is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the

specified period and are affected rent:

- April 1, 2020
- May 1, 2020
- June 1, 2020
- July 1, 2020
- August 1, 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. . . .

I note that the Landlord has claimed the repayment amount for October 2020 that the Tenant failed to pay on October 1, 2020. However, this is a repayment of a previous amount that the Tenant failed to pay in the Affected rent months. Given that the Landlord is also claiming recovery of the rent from the affected months, I find that it is inappropriate to award the unpaid repayment amount, as well. As such, I have deducted the October repayment amount from the Landlord's award.

Accordingly, and based on the undisputed evidence before me overall, and pursuant to section 10.2 of the EPA and the C19 Tenancy Regulation, I find that the Tenant has failed to pay his rent as stipulated in his rent repayment plan. I, therefore, award the Landlord with recovery of the outstanding rent owed to the Landlord by the Tenant in the amount of **$17,220.00**, pursuant to section 67 of the Act.

Given the Landlord's success in this Application, I also award the Landlord with recovery of the $100.00 Application filing fee, pursuant to section 72 of the Act. I grant the Landlord a monetary order in the amount of **$17,320.00** from the Tenant, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their claim for compensation against the Tenant for unpaid rent owed to the Landlord of $17,220.00. The Tenant failed to attend the teleconference hearing into this matter, and the Landlord presented sufficient evidence to support their Application on a balance of probabilities.

The Landlord is also awarded recovery of the $100.00 Application filing fee, and therefore, is granted a total monetary order under section 67 in the amount of **$17,320.00.**

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 09, 2020

Residential Tenancy Branch