



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on November 27, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing. The Tenant confirmed receipt of the Landlord's application and evidence packages (2 packages), and did not take issue with service. I find the Landlord sufficiently served the hearing documents, and evidence. The Landlord confirmed receipt of the Tenants' evidence package, and did not take issue with service.

Although the Landlord indicated on their application that they wanted to retain the security deposit to offset rent owed, I confirmed in the hearing that the Landlords wish to keep the security deposit separate as the tenancy is still active, as of the time of this hearing. I hereby amend the Landlord's application to remove the claim against the security deposit they currently hold.

Both parties were provided 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 or utilities?

Background and Evidence

Both parties agree that monthly rent is \$2,150.00, and is due on the 1st of the month. Both parties also agree that the Landlords still hold a security deposit in the amount of \$1,075.00.

As per the tenancy agreement provided into evidence, the tenancy started sometime around July 2017, and continues to this day, although the Tenants are planning on moving out shortly. The relationship between the parties has degraded significantly over the last few months. The parties have separate proceedings for other matters (Notice to End Tenancy, and monetary matters). However, this application is only related to what amount of rent is owed.

The Landlords explained that since COVID-19 (starting around April 2020), the Tenants have fallen behind on rent. More specifically, the Landlords stated that the Tenants only paid partial amounts for some months, and other months they have paid nothing. The Landlords summarized the payments as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
April 2020	Rent Due	\$2,150.00	\$1,150.00	\$1,000.00
May 2020	Rent Due	\$2,150.00	\$1,150.00	\$2,000.00
June 2020	Rent Due	\$2,150.00	\$1,150.00	\$3,000.00
July 2020	Rent Due	\$2,150.00	\$1,250.00	\$3,900.00
August 2020	Rent Due	\$2,150.00	\$0.00	\$6,050.00
<i>Accumulated Affected Rent</i>				<i>\$6,050.00</i>
September 2020	Rent Due	\$2,150.00	\$2,150.00	\$6,050.00
October 2020	Rent Due	\$2,150.00	\$2,150.00	\$6,050.00
October 2020	1 st Repayment Plan Installment Due	\$605.00	\$605.00	\$5,445.00
November 2020	Rent Due	\$2,150.00	\$2,150.00	\$5,445.00
November 2020	2 nd Repayment Plan Installment Due	\$605.00	\$605.00	\$4,840.00
Total Accrued Balance at time of hearing				\$4,840.00

The Landlords were aware that they had to issue a Repayment Plan for the “affected rent” (April-August 2020 rent). As such, the Landlords sent the Repayment Plan to the Tenants by registered mail on August 19, 2020. A copy of the Repayment Plan was provided into evidence, which shows that \$6,050.00 was outstanding from the period of March 18, 2020, until August 17, 2020. The Landlord laid out a plan for 10 equal payments of \$605.00, starting October 1, 2020, and ending July 1, 2021.

The Landlord also filed an application for monetary compensation for unpaid affected rent on August 10, 2020, which was before they issued the repayment plan.

The Tenants agree that they owe the above noted rent, which totalled \$6,050.00 as of the end of August 2020. The Tenants stated they have had a profound loss of income this year due to the pandemic, and are barely staying afloat. The Tenants stated that after the rules changed in August 2020, they started paying rent again, in full, even though they could not afford it because they did not want to lose their tenancy. The Tenants agree they missed the payments, as noted above from April through August 2020, but since September 1, 2020, onwards, the Tenants have paid the required amounts (rent, plus their repayment plan payments) in full.

The Tenants acknowledge that they were late paying the first installment payment in October 2020, as they were unclear how the Landlord’s recently issues 2-Month Notice to End Tenancy would impact their repayment agreement. As such, the Tenants were late paying the first installment by a couple of days, but ultimately paid the required amounts after understanding that the payments were required regardless of what Notices were issued. The Tenants feel they should be allowed to repay their unpaid affected rent in accordance with the repayment agreement, and cannot afford to repay it all at once.

The Landlords are seeking a monetary order for all of the unpaid affected rent, which at the time of this hearing, amounts to \$4,840.00 (\$6,050.00 total affected rent, less two installment payments \$605.00x2).

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

I note the Landlords filed this application to recover unpaid “affected rent” (rent that became due between March 18, 2020, until August 17, 2020.) I note the Landlords filed this application on August 10, 2020, which is before the repayment agreement was given to the Tenants. I have reviewed the repayment agreement/plan, and I find it is a valid repayment agreement. The Tenants do not dispute the amounts claimed by the Landlord but cannot afford to repay this amount in full, and want the opportunity to repay the accrued debt in accordance with the repayment plan.

I note the following portion of the ***Policy Guideline #52 - COVID-19: Repayment Plans and Related Measures:***

F. APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT MADE ON OR AFTER JULY 31, 2020

If no valid repayment plan has been given to a tenant, or a valid repayment plan has been given to a tenant or a landlord and tenant have a valid prior agreement in place and the tenant is in good standing because:

- *the first payment has not come due, or*
- *the tenant is paying the installments as required.*

then an arbitrator may dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.

July 31, 2020 is when COVID-19 (Residential Tenancy and Manufactured Home Park Tenancy Act) Regulation came into effect. This regulation established the repayment plan scheme that has been continued under the C19 Tenancy Regulation. Applications for monetary orders for unpaid affected rent made after this time when a tenant is in good standing under the terms of the C19 Tenancy Regulation are generally considered to be an attempt to circumvent the C19 Tenancy Regulation. This can qualify as an abuse of the dispute resolution process.

Having reviewed the totality of the situation, I find a valid repayment agreement has been given to the Tenants, and I find the Tenants are currently in good standing because the Tenants have paid the first installments thus far. As such, I dismiss the Landlord’s application, with leave to reapply. Should tenancy end, or should the Tenants fail to make their monthly payments, the Landlords may re-apply for any and all outstanding rent as of that date.

Since the Landlord was not successful with this application, I decline to award the recovery of the filing fee.

Conclusion

The Landlords' application is dismissed, with leave to reapply.

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: November 30, 2020

Residential Tenancy Branch