



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bosa Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with the landlord's application filed on September 23, 2020 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agents.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in March 2020. The monthly rent is \$1,495.00 payable on the first of each month. The tenant failed to pay rent in full for the months of May, June, July and August, 2020. The parties entered into a Repayment Plan and the current rental arrear is \$2,021.00, as at the date of the hearing January 14, 2021.

The parties agree that a valid Repayment Plan was issued by the landlord dated August 21, 2020, and that the tenant is in good standing as they have made all installments payments in accordance with the schedule.

The landlord now seeks a monetary order for the unpaid affected rent as they wish to have some recourse should the tenant fail to make an installment payment in the future.

Analysis

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"), was made on August 14, 2020 retroactively taking effect as of July 31, 2020, and provides that a landlord must issue a Repayment Plan if there is overdue rent arising from the period of March 18, 2020 to August 17, 2020.

Residential Tenancy Policy Guideline 52 provides guidance on applications for monetary orders for unpaid rent. Section F of the Guideline provides that if a valid repayment plan has been given to a tenant and the tenant is in good standing because the tenant has paid all installments as required then an arbitrator may dismiss an application for a monetary order with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.

I accept the evidence of the parties that the rental arrear arises from the affected period and that a valid Repayment Plan was issued pursuant to the regulations. I further accept the undisputed evidence of the parties that the tenant is in good standing as they have made all installment payments according to the Repayment Plan. As such, I find the landlord's application is premature as the tenant has not breached the terms of the Repayment Plan nor has the tenancy ended. Accordingly, I dismiss the landlord's application with leave to reapply when the circumstances warrant a monetary order.

The landlord submits that they were successful in previous applications where they were issued a monetary order for the full amount of the arrear subject to the Repayment Plan. I note that the Policy Guideline provides that a monetary order may be granted for applications made before July 31, 2020, prior to the *C19 Tenancy Regulation* coming into effect.

The guideline states in part:

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.

I find it appropriate to note that I do not attribute to the landlord a purposeful attempt to abuse the dispute resolution process with the present application. I surmise that the premature application is borne out of confusion with the interpretation of the regulations and an overabundance of caution.

Conclusion

The landlord's 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: January 14, 2021

Residential Tenancy Branch