



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodsmere Holdings Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application, evidence and substituted service decision by email sent on November 9, 2020 in accordance with a Substituted Service decision of the Branch dated November 4, 2020. The landlord submitted a copy of the email sent as evidence in support of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on November 12, 2020, three days after mailing, in accordance with the Substitute Service Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

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

Background and Evidence

This tenancy commenced on December 1, 2019. The monthly rent was \$1,748.00 payable on the first of each month. The landlord collected a security deposit of \$874.00 which they still hold.

There was a previous hearing under the file number on the first page of this decision wherein the landlord was issued an Order of Possession and a Monetary Order in the amount of \$1,748.00 for unpaid rent for September 2020.

The landlord submits that the tenancy ended on October 15, 2020 in accordance with the Order of Possession. The landlord says that there is a rental arrear of \$6,991.39 for unpaid rent from April 2020 through October 2020.

Analysis

Section 67 of the *Act* establishes 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 damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of 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.

I accept the evidence of the landlord that there was a valid tenancy agreement wherein the tenant was obligated to pay rent in the amount of \$1,748.00 each month. I accept the evidence of the landlord that the tenant failed to pay the rent for the months of April through October 2020 and subsequently ended the tenancy with a rental arrear of \$6,991.39. Accordingly, while the rental arrear arises partially from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Therefore, the landlord is not required to issue a repayment plan to the tenant as the tenancy has ended.

As a binding monetary order was issued in the previous hearing for the unpaid rent for September 2020, I find I do not have the authority to make a new order for the rental arrear for that month.

I accept the landlord's submission that the rental arrear for which no previous order has been issued is \$5,243.39. Accordingly, I issue a monetary order in the landlord's favor in that amount.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,469.39, allowing the landlord to recover the unpaid rent and filing fee and to retain the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 4, 2021

Residential Tenancy Branch