



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

On September 30, 2020, the Landlord filed an Application for Dispute Resolution by Direct Request (the Application) under the Residential Tenancy Act (the Act), seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid rent or Utilities (the 10 Day Notice); and
- Recovery of unpaid rent.

A decision was rendered by an Adjudicator in the ex parte proceeding in favor of the Landlord on October 22, 2020, without a participatory hearing, pursuant to section 55(4) of the Act, and an Order of Possession was granted to the Landlord effective two days after service on the Tenants. A Monetary Order in the amount of \$57.52 was also granted to the Landlord for unpaid rent.

The Tenant J.C. subsequently filed an Application for Review Consideration on October 29, 2020, and a decision was rendered partially in favor of the Applicant on November 6, 2020, ordering that the Order of Possession and the portion of the decision relating to possession of the rental unit were upheld, but suspending the Monetary Order and the portion of the decision relating to monetary compensation, pending the outcome of the reconvened hearing.

The hearing was reconvened before me by telephone conference call at 11:00 A.M. on January 26, 2021, and was attended by two agents for the Landlord (the Agents), both of whom provided affirmed testimony. Neither the Tenants nor an agent acting on their behalf attended. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In the review consideration decision dated November 6, 2020, the arbitrator ordered the Tenant J.C. to serve the Landlord with the attached Notice of Hearing for the reconvened hearing, within 3 days of receipt of the review consideration decision. The arbitrator also ordered J.C. to serve a copy of the review consideration decision on the Landlord.

At the reconvened hearing, the Agents stated that neither they nor the Landlord were served with the above noted documents by either of the Tenants, and only became aware of the hearing as the result of a courtesy copy of the review consideration decision sent to the Landlord by the Residential Tenancy Branch (the Branch) by email on November 6, 2020. The Agents stated that they subsequently contacted the Branch to obtain hearing details, a copy of the Notice of Hearing, and service of evidence timelines. Branch records confirm that a courtesy copy of the review consideration decision was sent to the Landlord on November 6, 2020, and that the Agents called the Branch on November 17, 2020, and February 9, 2020, regarding the hearing.

Despite the fact that the Tenants did not serve them the above noted documents as required, or attend the Review Hearing granted as a result of their Application for Review Consideration, the Agents stated that they wished to proceed with the Review Hearing as scheduled, as they had obtained the hearing information from the Branch and had appeared at the hearing on time and ready to proceed.

Section 71(2)(b) and 71(2)(c) of the Act states that I may find that a document has been sufficiently served for the purposes of the Act on a date I specify, even if that document has not been served in accordance with section 88 or 89 of Act. Pursuant to sections 71(2)(b) and 71(2)(c) of the Act, I therefore find that the Landlord was sufficiently served with the review consideration decision and the Notice of Hearing for this Review Hearing, for the purposes of the Act and the Rules of Procedure, when they received them from the Branch on or about November 6, 2020. I verified that the Notice of Hearing information contained in the Notice of Hearing for this Review Hearing, provided to the Tenants on November 6, 2020, by email, as per their request, along with a copy of the review consideration decision granting this Review Hearing as a result of their Application for Review Consideration, was correct. I also note that neither of the Agents had difficulty attending the hearing on time using this information from the courtesy copy of the Notice of Hearing they received from the Branch.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. Based on the above,

and the request of the Agents who appeared at hearing, the hearing therefore proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to the Landlord at the e-mail address provided in the Landlord's original Application.

Although I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I advised the Agents that the purpose of the Review Hearing was to hear matters in relation to the Landlord's original Application for unpaid rent only. I also advised the Agents that in my decision, I would confirm, vary, or set aside the original decision in relation to unpaid rent and the Monetary Order, dated October 22, 2020.

Preliminary Matter #2

Although the Agents had submitted documentary evidence to the Branch for my consideration at the Review Hearing, they acknowledged at the hearing that this evidence had not been served on the Tenants as they do not know where they are. The Act and the Rules of Procedure require that all documentary evidence to be relied on at the hearing be served on the other party in advance of the hearing, in accordance with the timelines set out in the Act and the Rules of Procedure.

As the Agents acknowledged that the documentary evidence before me, which was submitted for the Review Hearing, was not served on the Tenants, I find that it would be a breach of the Act, the Rules of Procedure, and the principles of natural justice and administrative fairness, to accept them for consideration, as the Tenants were not provided an opportunity to review, consider, and respond to them prior to the hearing.

As a result, the hearing proceeded based only on the affirmed testimony of the Agents at the hearing and the documentary that the previous adjudicator and arbitrator found in

their respective decisions, dated October 22, 2020, and November 6, 2020, were sufficiently served for the purposes of the Act.

Preliminary Matter #3

The Agents stated that after service of the Order of Possession granted on October 22, 2020, which was posted to the door of the rental unit on October 26, 2020, the Tenants overhauled the rental unit and that the Landlord was required to get a writ of possession and hire a bailiff in order to gain possession of the rental unit. The Agents stated that the bailiff attended the rental unit to execute the writ of possession at 13:00 hours (1:00 P.M.) on November 9, 2020, and the tenancy ended that date as a result.

As a result of the above, the Agents stated that the amount of rent has increased since the date the Application was filed, as the Tenants did not pay any rent for either October or November of 2020. The Agents also stated that some of the previous unpaid rent was missed from the Landlord's original Application. As a result, the Agents sought to increase the amount of the monetary claim for unpaid rent.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing without need for service of an Amendment to the Application for Dispute Resolution.

As neither the Tenants nor an agent acting on their behalf, attended the Review Hearing granted as a result of the Tenant J.C.'s Application for Review Consideration, to present any arguments about why the Application should not be amended pursuant to rule 4.2 of the Rules of Procedure, or dispute the above noted affirmed testimony of the Agents, I therefore amended the Application at the hearing to include all outstanding rent owed as of the date of the hearing.

Although the Agents indicated that they also wanted to seek loss of rent after the Tenants vacated on November 9, 2020, and the recovery of costs associated with hiring a bailiff and enforcing the Order of Possession previously issued, I declined to amend the Application at the hearing under rule 4.2 of the Rules of Procedure to include these amounts, as I do not find it reasonable to conclude that the Tenants could reasonably have anticipated that the Agents were going to seek these amounts at the hearing, without service of an Amendment to the Application for Dispute Resolution on them stating as much. The Landlord remains at liberty to file a subsequent Application for

Dispute Resolution seeking recovery of these additional amounts, should they wish to do so. This is not an extension of any statutory time limit.

Issue(s) to be Decided

Are the decision and Monetary Order dated October 22, 2020, in relation to unpaid rent to be confirmed, varied, or set aside as a result of the Review Hearing?

Background and Evidence

The tenancy agreement in the documentary evidence before me, which was signed by the Landlord and the Tenants on May 5, 2013, states that rent in the amount of \$820.00 is due on the first day of each month for a month to month (periodic) tenancy which commenced on June 1, 2013. A copy of four Notice of Rent Increase forms showing rent increases up to the current monthly rent amount of \$929.02, were also submitted.

The Agents stated that the above noted terms of the tenancy agreement and the amount of rent due are correct. The agents stated that although the Tenants were served with four Notices of rent Increase throughout the tenancy, the Tenants simply ignored the last two Notice of Rent Increase forms served on them, and as a result, have only been paying \$871.50 per month since March 1, 2017, when the second Notice of Rent Increase took affect increasing rent to \$871.50 per month. As a result, the Agents stated that the Tenants have been significantly underpaying rent since the third Notice of Rent increase, which increased the rent to \$906.36 as of May 1, 2018, and the fourth Notice of Rent Increase, which increased the rent to \$929.02 as of May 1, 2019, took affect. Copies of the Notices of Rent Increase forms were submitted for my review and consideration, which the Agents testified were properly served more than three months in advance, as required by the Act.

The Agents stated that as the Tenants simply continued to pay \$871.50 per month in rent, despite having been properly served with the third and fourth Notice of Rent Increases in compliance with the Act, they were therefore short on rent in the amount of \$34.86 per month between May 1, 2018 – April 30, 2019, and \$57.52 per month between May 1, 2019 – September 30, 2020, which is the last month for which the Tenants paid rent. The Agents stated that despite the above noted monthly shortfalls in rent, the Tenants made one lump-sum payment in the amount of \$460.16 to catch up on some of the above noted outstanding rent. As a result, the Agents stated that the Tenants currently owe \$936.00 in outstanding rent for May 1, 2018 – September 30,

2020; \$418.32 for May 1, 2018 – April 30, 2019, plus \$977.84 for May 1, 2019 – September 30, 2020, less the lump sum payment of \$460.16.

In addition to the above, the Agent stated that the Tenants paid no rent in October 2020 or November 2020, and therefore sought \$929.02 in outstanding rent for October 2020, and \$278.64 in per diem rent, calculated at \$30.96 per day (\$929.02/30 days), for the 9 days in November 2020 that the Tenants occupied the rental unit before being removed by the bailiff. In total the Agents sought \$2,143.84 in outstanding rent.

No one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration. However, I note that copies of rent cheques submitted by the Tenants as part of their Application for Review Consideration show that they only paid rent in the amount of \$871.50.

Analysis

Section 26 (1) of the Act states that 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 the Act to deduct all or a portion of the rent.

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the Agents, I find that the Tenants were obligated to pay monthly rent in the amount of \$906.36 between May 1, 2018 – April 30, 2019, and \$929.02 per month thereafter, as per the tenancy agreement and the Notices of Rent Increase. I am also satisfied that the Tenants only paid \$871.50 in rent per month between May 1, 2018 – September 30, 2020, and no rent thereafter, with the exception of one lump-sum payment in the amount of \$460.16, made to catch up on some of the outstanding rent owed for failing to comply with the above noted rent increases.

Based on the above, and in the absence of any evidence to the contrary, I find that the Tenants currently owe \$2,143.84 in outstanding rent. As a result, I vary the decision and Monetary Order dated October 22, 2020, and I therefore grant the Landlord a Monetary Order in the amount of \$2,143.84, pursuant to section 67 of the Act.

Conclusion

The portion of the decision dated October 22, 2020, and the related Monetary Order, also dated October 2020, relating to unpaid rent are set aside and replaced with this decision and the Monetary Order set out below.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$2,143.84**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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. The Tenants are cautioned that costs of such enforcement may be recoverable from them by the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 10, 2021

Residential Tenancy Branch