



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BWAHAH HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Landlord issued a 10 Day Notice to End Tenancy (with repayment plan) that was not paid in the required time and the Landlord wants an order of possession, with a request for a monetary order of \$4,400.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, G.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he 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 him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his 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 and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 8, 2021. The Landlord provided a Canada Post tracking number 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 the Parties' email addresses in the Application, and he confirmed these addresses in the hearing. The Agent also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In the hearing, the Landlord said that the Tenant had already moved out, so the Landlord no longer needs and order of possession for the rental unit. However, the Landlord still seeks a monetary order for unpaid rent, and recovery of the Application filing fee.

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 confirmed the details in the tenancy agreement, including that the fixed-term tenancy began on May 1, 2020, running to April 30, 2021, and then was to operate on a month-to-month basis. The Agent confirmed that the Tenant was required to pay the Landlord a monthly rent of \$1,175.00, due on the first day of each month. The Agent said that the Tenant paid the Landlord a security deposit of \$587.50, and no pet damage deposit. The Landlord said that the Tenant moved out on February 25, 2021, but did not provide the Landlord with his forwarding address.

The Agent said that the amount claimed by the Landlord in the original Application does not equal the full amount of rent owing at the time of the hearing. He said the Tenant continued to fail to pay any rent, while living in the rental unit, further to being served with the Application documents by the Landlord.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that

the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after amending the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$4,400.00 to \$8,775.50.

Rent Due	Amt Owing	Amt Received	Date Received	Amt Owing
July 1, 2020	\$1,175.00	\$324.50	July 2020	\$850.50
Aug. 1, 2020	\$1,175.00	\$0.00		\$1,175.00
Sept.1, 2020	\$1,175.00	\$300.00	Sept 2020	\$875.00
Oct. 1, 2020	\$1,175.00	\$0.00		\$1,175.00
Nov. 1, 2020	\$1,175.00	\$0.00		\$1,175.00
Dec. 1, 2020	\$1,175.00	\$0.00		\$1,175.00
Jan 1, 2021	\$1,175.00	\$0.00		\$1,175.00
Feb. 1, 2021	\$1,175.00	\$0.00		\$1,175.00
			SUB-TOTAL	\$8,775.50
			Less Security Deposit	(\$587.50)
			+App. Filing Fee	\$100.00
			TOTAL OWING	\$8,288.00

The Agent said that the Tenant paid his full rent in May and June 2020; however, he did not pay his full rent in July or August 2020. The Agent said that the Tenant owed the Landlord \$2,025.50 for this period. The Agent said that the Landlord provided the Tenant with a repayment plan for the amount outstanding from the summer of 2020, with the first repayment portion of \$289.36 being due on January 1, 2021, along with the regular monthly rent. However, the Tenant did not pay any rent, nor any of the repayment amount on January 1, 2021, or after that date.

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.

Based on the evidence before me, I find that the Landlord is successful in his Application, as I find that the Tenant breached section 26 of the Act by not paying the rent owing to the Landlord from July 2020 through February 2021. Accordingly, I grant the Landlord a monetary award of **\$8,775.50** in unpaid rent, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit in partial satisfaction of the Landlord’s monetary award. The Landlord is authorized to retain the Tenant’s security deposit, and he is awarded a Monetary Order in the amount of **\$8,288.00** against the Tenant for recovery of the remaining amount of the award, including Application filing fee.

Conclusion

The Landlord’s Application for recovery of unpaid rent is successful in the amount of \$8,775.50. Further, the Landlord is awarded recovery of the \$100.00 filing fee.

The Landlord is authorized to keep the Tenant’s security deposit of \$587.50 in partial satisfaction of the Landlord’s monetary award. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$8,288.00** for the remainder of the monetary award owing by the Tenant to the Landlord. 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.

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: March 19, 2021

Residential Tenancy Branch