



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent testified that the tenants were personally served with the landlord's application for dispute resolution on December 4, 2020. The landlord entered into evidence a proof of service form signed by tenant J.S. confirming receipt of the landlords' application for dispute resolution. I find that the tenants were served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an

application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$5,788.50 accrued between November 2019 and November 2020. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenants has changed to \$5,361.50 accrued between November 2019 to March 2020.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$5,361.50.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the agent’s claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on October 31, 2018 and is currently ongoing. Monthly rent in the amount \$1,568.25 and parking in

the amount of \$101.25 are payable on the first day of each month. A security deposit of \$765.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants have had difficulty paying their rent during the pandemic and currently owe \$5,361.50 in unpaid rent, unpaid parking and NSF fees which have accrued between November 2019 and March 2021. The agent entered into evidence a ledger confirming same.

The agent testified that on September 23, 2020 a Repayment Plan for unpaid rent accrued between March 2020 and August 2020 was posted on the tenant's door. The agent entered into evidence a repayment plan serving list signed by the serving agent that states the repayment plan was "attached to door" on September 23, 2020. The repayment plan was entered into evidence and is dated September 24, 2020. The agent testified that the September 24, 2020 date was put on the form in error and should have read September 23, 2020. The Repayment Plan states that the tenants must pay \$438.81 per month from November 1, 2020 to July 1, 2021. The agent testified that the tenants have not made any of the repayment installments. This testimony was supported by the ledger entered into evidence.

The agent testified that the NSF fees are \$25.00 per occurrence. The ledger confirms same. The tenancy agreement states at section 4(c)(ii):

If the Rent or any other sum owing to the Landlord is not honoured at the financial institution upon which it is drawn, the Tenant will pay to the Landlord, in respect of the dishonoured payment, the dishonoured payment charges charged to the Landlord, Plus the \$25.00 fee for late rent, in addition to the sum owing.

Analysis

Residential Tenancy Regulation C19 states at section 3(2):

The landlord must give the tenant a repayment plan if

- (a) the tenant has overdue affected rent, and
- (b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

Residential Tenancy Regulation C19 defines "affected rent" as:

- (a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the specified period, and
- (b) utility charges that become due to be paid by a tenant during the specified period, if a tenancy agreement requires the tenant to pay utility charges to the landlord;

Residential Tenancy Regulation C19 defines “specified period” as the period that starts March 18, 2020 and ends on the earlier of the following:

- (a) August 17, 2020;
- (b) the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the Emergency Program Act expires or is cancelled.

Section 12(2) of the Residential Tenancy Regulation C19 states:

The landlord must give the tenant a repayment plan if

- (a) the tenant has overdue affected rent, and
- (b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

I accept the agent’s undisputed testimony that the Repayment Plan was posted on the tenants’ door on September 23, 2020. I find that service of the Repayment Plan was effected on the tenants on September 26, 2020, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

I accept the agent’s undisputed testimony that the September 24, 2020 date on the Repayment Plan was an error and that it should have read September 23, 2020. I find that the landlord served the tenants with a Repayment Plan in accordance with section 3(2) of Residential Tenancy Regulation C19.

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 this *Act*. Pursuant to section 26(1) of the *Act*, the tenancy agreement, and the ledger entered into evidence, I find that the tenants were obligated to pay the monthly rent and parking fees totalling \$1,669.50 from September 1, 2020 onwards and have failed to do so.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the “*Regulation*”) states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of

rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. Pursuant to the tenancy agreement and section 7 of the *Regulation*, I find that the landlord is entitled to the \$25.00 fee for NSF cheques.

Based on the undisputed testimony of the agent and the rent ledger entered into evidence, I find that the tenant defaulted on the Repayment Plan and all affected and non affected rent, parking and NSF fees, in the amount of \$5,361.50 are immediately due and payable.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$5,461.50.

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.

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 15, 2021

Residential Tenancy Branch