Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD & LANGARA GARDENS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL, MNDCL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act) on November 23, 2020, and an Amendment to the Application for Dispute Resolution (the Amendment) seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee for the Application.

The hearing was convened by telephone conference call and was attended by two agents for the Landlord (the Agents) and the Tenant, all of whom provided affirmed testimony. The Agents stated that the documentary evidence before me from the Landlord, and the Notice of Dispute Resolution Proceeding, which includes the Application and the Notice of Hearing, were sent to the Tenant by registered mail on December 2, 2020, the same day they received the Notice of Dispute Resolution Proceeding package from the Residential Tenancy Branch (the Branch). The Agents provided me with the registered mail tracking number, which I have recorded on the cover page of this decision, and the Canada Post tracking website shows that the registered mail was delivered on December 4, 2020. At the hearing the Tenant acknowledged receipt.

The Agents stated that the Amendment was subsequently sent to the Tenant by registered mail on January 15, 2021. The Agents provided me with the registered mail tracking number, which I have also recorded on the cover page of this decision, and the Canada Post tracking website shows that the registered mail was delivered on January 18, 2021. At the hearing the Tenant acknowledged receipt.

Based on the above, the hearing proceeded as scheduled and I accepted the documentary evidence before me from the Landlord for consideration. No documentary evidence was submitted for my consideration by the Tenant.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided for them in the Application.

Preliminary Matters

Preliminary Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Preliminary Matter #2

During settlement discussions the Tenant unexpectedly disconnected from the hearing, reconnecting after a brief period of time. The Landlord's Agents and I waited in the teleconference until the Tenant rejoined, after which time the hearing continued. No evidence or testimony was accepted by me for consideration while awaiting the Tenant's return to the teleconference.

Issue(s) to be Decided

Is the Landlord entitled to the recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee for the Application?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on June 20, 2014, states that the one year fixed term tenancy commenced on August 1, 2014, and that it was set to continue on a month to month (periodic) basis thereafter. The tenancy agreement states that rent in the amount of $1,310.00 is due on the first day of the month, and that a $655.00 security deposit was required. At the hearing the parties confirmed that the $655.00 security deposit was paid, and is still held in trust by the Landlord, as the Tenant has yet to provide the Landlord with their forwarding address in writing.

Although the parties could not agree on the exact end date for the tenancy, they agreed that it ended in late January of 2021, with the Landlord stating that it ended on January 22, 2021, and the Tenant stating that it ended on January 21, 2021. The parties agreed that rent was increased during the course of the tenancy in accordance with e Act and regulations, and that it was $1,505.00 per month at the time the tenancy ended. They also agreed that the Tenant paid an additional $60.00 per month in parking fees, and that the parking fees were stopped in December of 2020. Further to this, the Landlord stated that the Tenant was given three months of free parking in April, May, and June of 2020.

The parties agreed that the Tenant paid no rent in April, May, June, and August of 2020, but disagreed about the number of months during this period in which the Landlord received that the BC Temporary Rental Supplement (the Rent Supplement) in the amount of $500.00 per month, on behalf of the Tenant. They also agreed that the Tenant paid no rent in November and December of 2020, and that December 2020 rent has previously been dealt with by the Branch, as a result of the Landlord's previous Application for Dispute Resolution by Direct Request.

The Tenant stated that they Applied for the Rent Supplement in May of 2020 and thought that their eligibility for the program was back dated to April 2020. As a result, the Tenant stated that they thought the Landlord received $500.00 per month in April, May, June, July, and August of 2020 as part of the program. When asked, the Tenant acknowledged that they did not know for sure if the Landlord ever received the Rent Supplement for April, and reiterated their belief that the Rent Supplement was retroactive. They also argued that if the Landlord did not receive the Rent Supplement for April 2020, it was the Landlord's job to seek this amount from the government.

While the Landlord acknowledged receipt of $500.00 per month in Rent Supplements in May, June, July, and August of 2020, they stated that as the Tenant did not apply for the Rent Supplement until sometime in May, they did not receive any subsidy amount on behalf of the Tenant for April 2020, as the program was not retroactive. As a result, the Landlord sought $7,475.51 in outstanding rent and fees as follows:

- $3,010.00 in rent for April and November of 2020 ($1,505.00 per month)
- $3,015.00 in outstanding rent for May, June, and August of 2020 ($1,505.00 per month, less the $500.00 subsidy received);
- $1,019.51 in pro-rated rent for January of 2021;
- $300.00 in parking fees (charged at $60.00 per month for July – September 2020);
- $125.00 in late/NSF fees (charged at $25.00 per month from November 2020 – January 2021);and
- $6.00 in back owed rent.

The Tenant agreed with the above noted amounts, with the exception of the amount owed for April 2020, which the Tenant argued should be $1,005.00, not $1,505.00. Although the Tenant provided testimony at the hearing that the Landlord had restricted access to some services and facilities, such as the recreational and fitness facilities at the property, and the Landlord agreed that restrictions to these services and facilities had occurred, the parties disagreed about exactly what was restricted, why, and for how long. In any event, the parties were in agreement that the Tenant had not, at the time rent was withheld, either sought a rent reduction from the Landlord or the Branch, or been granted a rent reduction by either the Landlord or the Branch, for loss of use or the restriction or termination of any services or facilities.

The Landlord submitted documentary evidence in support of the Application including but not limited to, a rent ledger, a copy of the tenancy agreement, a copy of the parking agreement, correspondence sent to the Tenant in June, August, October and November of 2020 regarding outstanding rent and fees, a repayment plan, and five notices of rent increase. The Tenant did not submit any documentary evidence for my consideration, although they read out an email to me during the hearing, a copy of which was not submitted for my review, purportedly showing that they applied for the Rent Supplement in May of 2020.

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.

There are only six reasons why a tenant can withhold rent under the Act:

1. The landlord collected a security or pet damage deposit that is above the permitted amount (section 19(2) of the Act);
2. Section 33 of the Act in relation to emergency repairs applies;
3. The landlord imposed a rent increase that is above the amount allowed by law (section 43(5) of the Act);
4. The landlord issued the tenant(s) a notice to end tenancy under section 49 of the Act for landlord's use of property (section 51 of the Act);
5. An arbitrator allows the tenant(s) to withhold rent (section 65(1)(f) of the Act); and
6. The landlord consents to the tenants withholding of rent.

No arguments were made by the Tenant at the hearing that any of the first four reasons set out above, apply. As a result, I find that they do not. Although the Tenant argued at the hearing that the Landlord had restricted services and facilities without providing them with a rent reduction, the Tenant acknowledged that they were not granted authority from the Landlord or the Branch to withhold any amount of rent, at the time rent was withheld. As a result, I find that the Tenant did not have a right under the Act to withhold any amount of rent. Based on the above, and as the parties agreed at the hearing that $1,505.00 in rent was due on the first day of each month under the tenancy agreement, I therefore find that the Tenant was required to pay $1,505.00 in rent on the first day of each month. However, the Tenant remains at liberty to seek compensation from the Landlord for loss of use and/or a restriction or termination of services or facilities by filing an Application for Dispute Resolution with the Branch, should they wish to do so.

As the Tenant agreed that $6,975.51 was owed for outstanding rent, outstanding parking fees, and NSF fees, I grant the Landlord recovery of this amount. Although the Tenant argued that they are not responsible for $500.00 in rent claimed by the Landlord as outstanding for April 2020, I disagree. The Agents for the Landlord testified that this amount was owed and submitted a rent ledger showing that this amount was outstanding. Although the Tenant stated that they believe the Landlord was entitled to a retroactive Rent Supplement in the amount of $500.00 for April 2020, the Tenant provided no compelling evidence to support that any such retroactive Rent Supplement was ever granted to the Landlord for April 2020. As stated above, section 26 of the Act required tenants to pay rent in full and on time and by the Tenants own admission, they

did not Pay any rent for April 2020. Further to this, the Tenant stated at the hearing that they did not even apply for the Rent Supplement until May of 2020, and my understanding of the BC Temporary Rental Supplement is that it was not retroactive, meaning that applicants (tenants) were approved only as far back as the month in which their application was filed. As the Tenant stated that they did not even apply for the Rent Supplement until May of 2020, I do not see how they could reasonably have been eligible for the Rent Supplement for the previous month of April 2020.

Based on the above, I am satisfied that the Landlord did not receive the Rent Supplement in the amount of $500.00 for April of 2020 and as the Tenant acknowledge that they paid no rent themselves for April 2020, I find that they therefore owe this amount in addition to the $6,975.51 I have already found was owed for outstanding rent, outstanding parking fees, and NSF fees. As the Landlord was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of $7,575.51 and order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$7,575.51**. The Landlord is provided with this Order in the above terms and 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.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither my authority to render this decision nor the validity of it are affected by the fact that it was rendered more than 30 days after the close of the proceedings.

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

Dated: April 7, 2021

Residential Tenancy Branch