



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding QUADRA PACIFIC PROPERTIES CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord's agent, HS ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord said that she was the property manager for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on November 20, 2015 by way of registered mail. The landlord provided a Canada Post receipt and tracking number with its Application. The landlord provided a Canada Post printout of the tracking number and confirmed that the package was delivered and signed for by the tenant on November 27, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on November 25, 2015, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to correct the tenant's name, as it was listed in reverse order on the application. I find no prejudice to the tenant in doing so, as I found that the tenant had notice of the landlord's Application and all other documents provided by the landlord listed her name in the correct order.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2013. She said that monthly rent in the current amount of \$1,025.00 plus an additional \$20.00 for parking, is payable on the first day of each month. The landlord said that a security deposit of \$497.50 was paid by the tenant and the landlord continues to retain this deposit. The landlord explained that the tenant's rent was originally \$995.00 as per the tenancy agreement and it was increased twice, pursuant to legal notices of rent increase, the first from \$995.00 to \$1,010.00 and the second from \$1,010.00 to \$1,025.00. The landlord provided the second notice of rent increase, stating that she could not locate the first notice. The landlord confirmed that the tenant has vacated the rental unit. The landlord provided a copy of the written tenancy agreement.

The landlord seeks a monetary order of \$1,070.00 total, which includes \$1,025.00 for October 2015 rent, \$20.00 for October 2015 parking and \$25.00 for an October 2015 late rent fee. The landlord also seeks to recover the \$100.00 filing fee for this Application from the tenant.

The landlord said that the tenant provided a written notice on October 13, 2015, to move out by November 30, 2015. The landlord provided a copy of the notice for this hearing. The notice states that the tenant was no longer living at the unit at the time of the notice. The landlord said that she does not know when the tenant moved out. The landlord said that a new tenancy agreement was signed with a different tenant from November 1 to 30, 2015 and that rent was paid by this new tenant for that month. The landlord said that the tenant moved back into the unit to live with the new tenant, who was her friend. The landlord confirmed that the tenant was living in the unit in November 2015 and then she vacated again but she does not know when. The landlord said that the tenant did not pay rent, parking or late fees for October 2015, even though she gave notice to vacate at the end of November 2015.

### Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that rent of \$1,025.00 is due for this tenancy, as the landlord provided testimony and documentary evidence to support that two legal notices of rent increase were given to the tenant, that were in accordance with the amounts allowable under the *Regulation*. Therefore, I find that rent of \$1,025.00 was due on October 1, 2015. The landlord provided undisputed evidence that the tenant failed to pay this rent. The landlord provided evidence that the tenant provided notice to vacate on October 13, 2015, to leave by November 30, 2015. The tenant is required to provide one month's notice to vacate for a month-to-month tenancy, before the day when rent is due, under section 45 of the *Act*. Therefore, the tenant was responsible to pay October 2015 rent. The landlord provided undisputed evidence that the tenant failed to pay a parking fee of \$20.00 that is due as per the written tenancy agreement. Therefore, I find that the landlord is entitled to \$1,025.50 in rental arrears and \$20.00 in parking fees for October 2015.

I find that the landlord is entitled to \$25.00 in late fees for October 2015, for failing to pay rent when it is due. The landlord provided for this fee in the addendum to the tenancy agreement, as required by sections 7(1)(d) and (2) of the *Regulation*.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

The landlord continues to hold the tenant's security deposit of \$497.50. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$497.50 in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$672.50 against the tenant. 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: April 04, 2016

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Residential Tenancy Branch