



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 28, 2020. The landlord has submitted copies of the Canada Post Receipt and Tracking label as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. Despite not attending, the tenant is deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 17, 2019 on a fixed term tenancy ending on February 28, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 9, 2019. The monthly rent was \$1,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$800.00 was paid. The landlord stated that the tenancy is on going and the tenant is still occupying the rental unit.

At the outset, the landlord stated that since the application was filed, the tenant has not paid any rent up to and including the date of this hearing. The landlord clarified that a second monetary worksheet dated August 24, 2020 was an updated claim for unpaid rent for \$8,445.00. The landlord confirmed that an amendment to the monetary claim was not filed. The landlord was advised that as an amendment was not filed the landlord's application is limited to the original amount filed of \$3,350.00. The landlord stated the amount filed for the application of \$3,350.00 was a clerical error and the landlord only seeks a monetary claim of \$1,625.00 based upon the monetary worksheet direct request dated April 27, 2020.

The landlord seeks a monetary claim of \$1,625.00 which consists of:

\$1,625.00	Unpaid Rent, April 2020
\$25.00	Parking Fee

### Analysis and Conclusion

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to

prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Residential Tenancy Branch Policy Guideline #52, COVID-19: Repayment Plans and Related Measures states in part,

*This policy guideline addresses the COVID-19 pandemic and COVID-19 (Residential Tenancy and Manufactured Home Park Tenancy Act) (No. 2) Regulation made under the Emergency Program Act and the COVID-19 Related Measures Act.*

#### **A. LEGISLATIVE FRAMEWORK**

*Section 10.1(1) of the Emergency Program Act (EPA) provides that after a declaration of a state of emergency is made, and for the duration of the state of emergency, government may make regulations to prevent, respond to or alleviate the effects of an emergency or a disaster by:*

- making an exception to an enactment;*
- establishing limits on the application of an enactment;*
- establishing powers, duties, functions or obligations that apply in place of or in addition to an enactment;*
- establishing conditions in relation to anything done or established under the above bullets.*

*Section 10.2 of the EPA provides for a regulation specifying that the failure to comply with a provision of a regulation made under section 10.1(1) is to be treated as though it were a failure to comply with the legislation to which that section 10.1(1) regulation relates.*

*The COVID-19 Related Measures Act (“C19 Act”) allows for regulations made under section 10.1 of the EPA to remain in force for up to one year after the C19 Act came into force (July 10, 2020). The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (“C19 Tenancy Regulation”), was made under sections 10.1 and 10.2 of the EPA on August 14, 2020.*

*Sections 3 and 12 of the C19 Tenancy Regulation provide that a landlord must not give a tenant notice to end a tenancy in respect of **affected rent** that is unpaid under sections 44(1)(a)(ii) and 46 of the Residential Tenancy Act (RTA) and sections 37(1)(a)(ii) and 39 of the of the Manufactured Home Park Tenancy Act (MHPTA). Notices to end tenancy for affected rent may only be issued when the conditions set out in the C19 Tenancy Regulation have been met.*

**“Affected rent” means**

- rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17,*

2020, and

- *utility charges that become due to be paid by a tenant during the “specified period” between March 18, 2020 and August 17, 2020, if a tenancy agreement requires the tenant to pay utility charges to the landlord.*

*The “specified period” is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent:*

- *April 1, 2020*
- *May 1, 2020*
- *June 1, 2020*
- *July 1, 2020*
- *August 1, 2020*

In this case the landlord has applied for unpaid rent for April 2020.

***The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required...***

I find that as the landlord's application was made on April 27, 2020 that section E of this Guideline is relevant which states in part,

***E. APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT  
MADE BEFORE JULY 31, 2020***

*If a valid repayment plan has been given to a tenant and the tenant is in good standing because:*

- *the first payment has not come due, or*
- *the tenant is paying the installments as required,*

*an arbitrator may grant a monetary order but it will be subject to the terms of the repayment plan. The order will set out that the tenant must pay the unpaid affected rent in accordance with the repayment plan.*

*If a landlord and tenant have entered into a valid prior agreement and the tenant is in good standing, as set out above, then unless there are exceptional circumstances, an arbitrator will not grant a monetary order subject to the terms of the prior agreement. This is because the prior agreement can unilaterally be cancelled at any time by either party.*

*If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.*

***Where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may assist the parties in completing a repayment plan that meets the requirements of the C19 Tenancy Regulation or dismiss the application with leave to reapply.***

The landlord has confirmed that no repayment plan was given to the tenant and as the tenant was not present during the hearing, the landlord's monetary claim is dismissed with leave to reapply.

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: August 31, 2020

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Residential Tenancy Branch