



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartmnet Rentals
LtD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 67 of the *Act*,
- authorization to retain the tenants' security deposit under Section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 2:28 P.M. to enable the respondents to call into this teleconference hearing scheduled for 1:30 P.M. The respondents did not attend the hearing. 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 landlord (applicant) and I were the only ones who had called into this teleconference. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord affirmed she served the application and her evidence (the materials) by email to both respondents on May 12, 2020.

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that:

Pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act* and sections 64(2)(b) and (c) of the *Manufactured Home Park Tenancy Act*, I order that, until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

- a document of the type described in section 88 or 89 of the *Residential Tenancy Act* or section 81 or 82 of the *Manufactured Home Park Tenancy Act* has been

sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
- the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Respondent CG replied to the email sent by the landlord on May 12, 2020 and stated:

Just to let you know that we will not attend any conference all or respondent to any more emails, I have returned home to deal with death within my family, I understand we have broken agreements in terms of leaving prior to a satisfactory notice but simply put I do not care. Furthermore you have our security deposit which more than covers any cost, not to mention that's what it's for. Thanks. CG.

The landlord submitted into evidence the email sent to respondent VA on May 12, 2020 with the materials and emails received from respondent VA using the same email address on April 29 and May 04, 2020 corresponding about tenancy matters.

I find the respondents were served the materials in accordance with the Director's order dated March 30, 2020 and section 71(2)(b) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – occupant

The landlord explained only VA signed the agreement and her boyfriend (respondent CG) was an approved occupant of the rental unit. I find respondent CG was an occupant and not a tenant. As such, CG is not obligated to make any payments to the landlord.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the landlord; it is her obligation to present the evidence to substantiate his application.

The landlord affirmed the fixed term tenancy started on February 01, ended on May 04 and was supposed to end on July 31, 2020. Monthly rent was \$1,800.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$900.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The tenancy agreement addendum indicates:

1. ARREARS. (a) Late payments (after midnight on the 1st of the month) are subject to a minimum service charge of \$25.00. (b) Non-sufficient funds and returned cheques (N.S.F.) are subject to an additional minimum service charge of \$25.00 each, or the then current rate charged for such services...

The landlord testified the respondents did not give notice to end tenancy, did not pay rent for the month of May and the rental unit was not re-rented until July 01, 2020. The landlord stated the bank informed the authorized auto payment for May's rent was not possible because the respondents' bank account did not have sufficient funds.

A monetary order worksheet was presented into evidence. The total amount requested for May's rent, late payment and non-sufficient funds fees is \$1,850.00.

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 this Act.

Based on the undisputed testimony and the tenancy agreement, I find that tenant VA was obligated to pay the monthly rent in the amount of \$1,800.00 on the first day of each month and did not pay rent for May 2020.

Thus, I find tenant VA owes rent to the landlord in the amount \$1,800.00 for May's 2020 rent.

Based on the landlord's testimony and the tenancy agreement addendum, I find tenant VA owes the late payment fee and non-sufficient fund fee in the total amount of \$50.00.

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$900.00 security deposit.

In summary:

May rent	\$1,800.00
Late payment and non-sufficient fund fees	\$50.00
Filing fee	\$100.00
Sub-total	\$1,950.00
Security damage deposit	-\$900.00
Monetary award	\$1,050.00

Conclusion

Pursuant to sections 38, 67 and 72 of the *Act*, I authorize the landlord to retain the \$900.00 security damage deposit and grant the landlord a monetary order in the amount of \$1,050.00.

The landlord is provided with this order in the above terms and tenant VA 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: September 01, 2020

Residential Tenancy Branch