



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding Cascadia Apartment Rentals LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed on behalf of the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Recovery of the filing fee; and
- Authorization to withhold the Tenants' pet damage deposit and security deposit towards amounts owed.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord O.B. (the Agent), who provided affirmed testimony. No one appeared on behalf of the Tenants. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application, the Notice of Hearing, and all documentary evidence intended to be relied on by the Applicant at the hearing. As no one appeared in the hearing on behalf of the Tenants, I confirmed service of these documents as explained below.

The Agent testified that each of the Tenants was sent a copy of the Notice of Dispute Resolution Proceeding Package, which contained a copy of the Application, the Notice of Hearing, and the documentary evidence before me on behalf of the Landlord, by registered mail at the rental unit address on May 21, 2020. The Agent provided me with the registered mail tracking numbers, which have been recorded on the cover page of this decision, and a copy of the registered mail receipts and address tags. Section 90(a) of the Act states that documents sent by registered mail are deemed received five days

later, if not earlier received. As a result of the above and in the absence of any evidence to the contrary, I find that the Tenants were each deemed served with the above noted documents on May 26, 2020. As the Agent testified that the tenancy ended on July 16, 2020, I find the rental unit address constituted a valid address for service under sections 88(c) and 89(1)(c) of the Act at the time the registered mail packages were deemed served as set out above.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As I have found above that the Tenants were deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord, on May 26, 2020, well in advance of the hearing, the hearing therefore proceeded as scheduled despite the absence of the Tenants and I accepted the Landlord's documentary evidence for consideration.

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 Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

#### Preliminary Matters

The Agent stated that since the Application was filed, the amount of rent and late fees owing has increased to \$2,950.00. As a result, they sought to amend the Application to include these amounts.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing. The Application was therefore amended pursuant to rule 4.2 of the Rules of Procedure to include the additional amounts now owed for rent and late fees.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the Tenants' pet damage deposit and security deposit towards amounts owed?

### Background and Evidence

The one year fixed-term tenancy agreement in the documentary evidence before me, signed by the parties on April 4, 2019, states that the tenancy commenced on May 1, 2019, and became month to month after the end of the fixed term on April 30, 2020. The tenancy agreement states that rent in the amount of \$1,450.00 is due on the first day of each month, that a security deposit in the amount of \$725.00 is to be paid, and that late fees will be charged at \$25.00 per month if rent is not received in full on the first day of the month.

During the hearing the Agent confirmed that these are the correct terms of the tenancy agreement, that the \$725.00 security deposit was paid, and that a pet damage deposit in the amount of \$725.00 was also paid, both of which the Landlord still holds as the Tenants did not provide a forwarding address in writing before or after the end date of the tenancy on June 16, 2020.

The Agent stated that the Landlord is seeking \$2,950.00 in unpaid rent and late fees for May and June of 2020, and recovery of the \$100.00 filing fee. In support of their testimony that the above noted amounts are owed for rent and late fees, the Agent pointed to a rent ledger and the copy of the tenancy agreement in the documentary evidence before me.

No one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration, despite my earlier finding in this decision that the Tenants were each deemed served with a copy of the Application and the Notice of Hearing on May 26, 2020, at a valid address for service.

### Analysis

Based on the undisputed and affirmed testimony of the Agent, the documentary evidence before me for consideration, and in the absence of any evidence to the contrary, I accept as fact that a tenancy under the Act existed between the Landlord and the Tenants which ended on June 16, 2020, that \$2,950.00 is owed to the Landlord for

unpaid rent and late fees for May and June of 2020, and that the Tenants have not provided a forwarding address in writing.

As a result, I find that the Landlord was not required to return the Tenants' security deposit or pet damage deposit after the end of the tenancy on June 16, 2020, and is therefore entitled to withhold both deposits against amounts owed by the Tenants to the Landlord, pursuant to section 38(1) and 72(2)(b) of the Act. 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.

Based on the above, and pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$1,600.00; \$2,950.00 in outstanding rent and late fees, plus \$100.00 for recovery of the filing fee, less the \$1,450.00 in deposits retained by the Landlord. I therefore order the Tenants 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 **\$1,600.00**. 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: September 25, 2020

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Residential Tenancy Branch