



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avesta Strata & Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, MNRL-S**

Introduction

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager, DD ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified she served the tenant with the Application for Dispute Resolution Proceedings Package by email on May 28, 2020 at 12:48 p.m. She also taped a copy of the application to the tenant's door the same afternoon. The landlord testified that the email address she served the Application for Dispute Resolution Proceedings Package to the tenant was the same one used in multiple correspondences between the landlord and tenant. As an example, the landlord testified she received an email from the tenant on April 20, 2020 at 1:47 p.m. from the email address listed on her Application for Dispute Resolution Proceedings. This email was in relation to confirmation the tenant applied for government subsidies to assist in paying rent and

lowering the asking price for an RV he was selling. Based on the landlord's undisputed testimony, I am satisfied the tenant was served with the Application for Dispute Resolution Proceedings Package three days after service, on May 31, 2020 in accordance with the Director's Order allowing for service by email made on March 30, 2020.

Issue(s) to be Decided

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

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on July 1, 2019 with rent set at \$2,900.00 payable on the first day of each month. A security deposit of \$75.00 was collected by the landlord at the commencement of the tenancy. The owner of the rental unit is listed as landlord, however the property management company named as landlord in this application took over management of the property in October 2019.

The tenant paid rent up until the end of March but did not pay rent for the months of April or May. On May 26th, the landlord applied for a monetary order for unpaid rent and served the tenant with the application on May 28th. By May 30th, the landlord noticed the tenant had apparently abandoned the rental unit and the tenant's car was no longer parked on the property. The landlord testified that the tenant had 'trashed' the rental unit prior to leaving, however the landlord was able to re-rent the unit for July 15th. The landlord is not seeking rent compensation for June or the first two weeks of July.

Analysis

Section 26 of the Residential Tenancy 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, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant was obligated to pay \$2,900.00 monthly rent. He did not have any right to deduct any portion of the rent. I accept the landlord's undisputed evidence that the total amount of arrears for unpaid April and May rent is \$5,800.00. I issue a monetary order in the landlord's favour in that amount, pursuant to section 67 of the Act.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$75.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Item	Amount
April rent	\$2,900.00
May rent	\$2,900.00
Filing fee	\$100.00
Less security deposit	(\$75.00)
Total	\$5,825.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,825.00**. The tenant 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 28, 2020

Residential Tenancy Branch