



# 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 an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the Tenants' security deposit.

The hearing was convened by telephone conference call and was attended by an agent for the Landlord (the Agent), who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. 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 respondents must be served with a copy of the Application and the Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Landlord's documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing (which includes the date and time of the hearing as well as instructions on how to attend), were sent individually to each of the Tenants by registered mail on July 6, 2020, at the forwarding address provided by them in writing on June 19, 2020. The Agent provided me with the registered mail tracking numbers and the Canada Post website confirms that the registered mail packages were sent as described above and delivered on July 8, 2020. As a result, I find that the Tenants were each served with

the above noted documents in accordance with the Act and the Rules of Procedure on July 8, 2020.

Based on the above and pursuant to rule 7.3 of the rules of procedure, the hearing therefore proceeded as scheduled despite the absence of the Tenants.

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 facts and issues in this decision.

At the request of the Agent, copies 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.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the Tenants' security deposit?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on April 24, 2020, states that the one year fixed term tenancy was to commence on June 20, 2020, and end on June 30, 2021, after which time the tenancy would become month to month. The tenancy agreement states that rent in the amount of \$2,100.00 was due on the first day of each month and that a security deposit in the amount of \$1,050.00 was to be paid. During the hearing the Agent confirmed that these are the correct terms for the tenancy agreement and that the \$1,050.00 security deposit was paid by the Tenants on April 24, 2020, and is still held by the Landlord in trust.

The Agent stated that on June 19, 2020, one of the Tenants attended the rental unit to complete the move-in condition inspection. The Agent stated that the condition inspection was completed, and the keys were given to the Tenant, who then left. The Agent stated that approximately 30 minutes later the Tenant returned to their office, turned in the keys to the rental unit and gave written notice that they were not going to

move in. The Agent stated that later that day an email was also received confirming that the Tenants were not intending to move into the rental unit and providing a forwarding address for the purpose of returning their security deposit. Copies of these notices were provided for my review and consideration.

The Agent stated that they are unsure why the Tenants gave notice, as they were never provided with any reason, and the rental unit was in excellent condition with new paint and new hardwood floors. The Agent stated that the rental unit was posted for re-rental on the Landlords website the same day that notice was given by the Tenants, June 19, 2020, and on a popular website the following morning. The Agent stated that the rental unit was subsequently re-rented to new tenants for July 16, 2020, at the same rental rate, \$2,100.00 a month.

The Agent stated that the Tenants breached the Act and their tenancy agreement by ending the tenancy early without a right under the Act to do so, resulting in a \$770.00 loss of rent for June 20<sup>th</sup> – 30<sup>th</sup>, 2020, and a \$1,050.00 loss of rent for July 1<sup>st</sup> – 15<sup>th</sup>, 2020. The Agent therefore sought authorization for the Landlord to withhold the Tenants' \$1,050.00 security deposit for unpaid rent and a Monetary Order in the amount of \$1,920.00 for the balance of rent owed and recovery of the \$100.00 filing fee.

No one appeared on behalf of the Tenants to provide any evidence or testimony for my consideration despite my earlier finding in this decision that both Tenants were sufficiently served with notice of the hearing and a copy of the Application by registered mail on July 8, 2020.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a fixed term tenancy agreement was entered into between the Landlord and the Tenants on April 24, 2020, for a one year fixed term tenancy set to commence on June 20, 2020, and end on June 30, 2021. I am also satisfied that rent in the amount of \$2,100.00 was due on the first day of each month in accordance with the tenancy agreement and that a security deposit in the amount of \$1,050.00 was paid, which the Landlord still holds.

Based on the evidence and testimony before me I am satisfied that on June 19, 2020, the Landlord received written notice that the Tenants did not intend to move into the rental unit and that the tenancy was therefore ended by the Tenants that day without the Tenants ever having moved in.

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

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the above, I find that the earliest date that the Tenants could have ended their fixed term tenancy under the Act by giving written notice to do so, was June 30, 2021. As a result, I find that the Tenants breached section 47(2) of the Act as well as their fixed term tenancy agreement by ending their fixed term tenancy early. As there is no evidence before me that the Tenants had a right under the Act to withhold rent, I also find that the Tenants were therefore required to pay rent for June 20<sup>th</sup> -June 30<sup>th</sup>, 2020, as set out in their tenancy agreement, regardless of the fact that they never occupied the rental unit. I therefore award the Landlord the \$770.00 sought for June 2020 rent ( $\$2,100.00/30 \text{ days} = \$70.00/\text{day} \times 11 \text{ days} = \$770.00$ )

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the Agents affirmed and uncontested testimony, I am satisfied that the Landlord acted diligently in having the rental unit re-rented at a reasonably economic rental rate as soon as possible. As a result, I am also satisfied that the Landlord is entitled to the \$1,050.00 sought for lost rent for July 2020, as the Tenants ended their tenancy early in contravention of section 47(2) of the Act and the Landlord suffered a loss of half a months rent for July 2020 as a result. 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.

As the Tenants ended their tenancy and provided their forwarding address to the Landlord in writing on June 19, 2020, and the Landlord filed their Application seeking retention of the security deposit for unpaid rent and other money owed on June 30, 2020, I find that the Landlord complied with section 38(1) of the Act. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' \$1,050.00 security deposit in partial satisfaction of the above noted amounts owed.

Pursuant to section 67 of the Act, I find that the Landlord is entitled to a Monetary Order in the amount of \$1,920.00; \$770.00 for June rent, plus \$1,050.00 for July rent, plus \$100.00 for recovery of the filing fee, less the \$1,050.00 security deposit 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 **\$1,920.00**. 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 Act.

Dated: October 23, 2020

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Residential Tenancy Branch