



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Grace Court Holdings Ltd. c/o Carrera Mgmt Corp and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-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, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The senior property manager (the "manager") and property administrator attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 property manager and property administrator and I were the only ones who had called into this teleconference.

The manager testified that the tenant was served with this application for dispute resolution via registered mail on October 8, 2020. The manager entered into evidence a Canada Post receipt confirming the above mailing. I find that pursuant to section 90 of the *Act*, the tenant was deemed served with the landlord's application for dispute resolution on October 13, 2020, five days after its registered mailing.

The manager testified that the tenant was also personally served on October 14, 2020. A witnessed proof of service document stating same was entered into evidence. I find that the tenant was served a second time on October 14, 2020 with this application for dispute resolution, in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the manager and property administrator, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The manager provided the following undisputed testimony. This tenancy began on November 1, 2019. This tenancy ended on October 20, 2020, pursuant to an Order of Possession granted by the Residential Tenancy Branch in a Direct Request Decision for nonpayment of September 2020's rent in the amount of \$2,000.00. The manager testified that the landlord was also granted a Monetary Order for September 2020's rent in the amount of \$2,000.00. The file number for the previous decision is located on the cover page of this decision.

The manager provided the following undisputed testimony. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant did not provide the landlord with a forwarding address.

The manager testified that the tenant accrued \$9,460.00 in unpaid rent between March 2020 and October 2020, excluding September 2020's rent. The landlord testified that \$14,000.00 in rent was due during the above period; however, the tenant only made the following rent payments:

- April 1, 2020: \$2,040.00;
- May 26, 2020: \$1,000.00;
- June 8, 2020: \$500.00; and
- June 12, 2020: \$1,000.00.

A ledger confirming the manager's testimony was entered into evidence. The payments made by the tenant total \$4,540.00.  $\$14,000.00 - \$4,540.00 = \$9,460.00$ .

For clarity, the above claim does not include a claim for September 2020's rent as that was already granted in the previous Residential Tenancy Branch Decision.

The manager testified that the tenant also incurred four \$30.00 insufficient fund ("NSF") charges for the following months in 2020: February, March, April, and May. The ledger entered into evidence confirmed the above charges.

### 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*.

Residential Tenancy Branch Policy Guideline 52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the RTB for a monetary order

"Affected rent" is 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.

Based on the undisputed testimony of the manager and the ledger entered into evidence, I find that the tenant owes the landlord \$9,460.00 in unpaid rent. As this tenancy has ended, I find that the landlord is entitled to recover the entirety of outstanding rent owed by the tenant, including "affected rent".

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 22 of the Addendum to the Tenancy Agreement states in part:

The Landlord may charge the Tenant an administration fee of up to \$30.00 for late payment of all or some of the rent or a returned cheque for non-sufficient funds ("NSF" cheque)...

Based on the manager's testimony and the ledger entered into evidence, I find that four of the tenant's rent cheques were returned due to insufficient funds. I find that, pursuant to section 7(1)(d) of the *Act*, the landlord is only permitted to charge the tenant \$25.00 for each returned cheque. Therefore, I find that the landlord is entitled to NSF fees in the amount of \$100.00.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,000.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$9,460.00
NSF fees	\$100.00
Filing Fee	\$100.00
Less security deposit	-\$1,000.00
<b>TOTAL</b>	<b>\$8,660.00</b>

The landlord is provided with this Order in the above terms and the tenant 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: November 16, 2020

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Residential Tenancy Branch