



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNRL-S, MNDCL-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;
- a Monetary Order for damage or compensation, pursuant to section 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 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's accounts manager and director of property management 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 landlord's agents and I were the only ones who had called into this teleconference.

The accounts manager testified that the tenant was served via registered mail on October 14, 2020. A Canada Post tracking printout and tracking number were entered into evidence. The accounts manager testified that the package was received by the tenant on October 31, 2020. I find that the tenant was served 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 a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2016 and ended on July 30, 2020. Monthly rent in the amount of \$707.00 was payable on the first day of each month. A security deposit of \$347.50 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 accounts manager testified that the caretaker of the subject rental property witnessed the tenant moving out on July 28, 2020 and instructed the tenant to contact the office. The accounts manager testified that the tenant contacted the office to confirm that he is moving out of the subject rental property and the parties arranged to complete a move out condition inspection for July 30, 2020.

The accounts manager testified that both parties completed and signed a move in condition inspection report on December 1, 2016. The agent testified that both parties completed and signed a move out condition inspection report on July 30, 2020. The move in and move out reports were entered into evidence.

In the move out condition inspection report the tenant authorized the landlord in writing to retain the security deposit.

The accounts manager testified that the tenant did not pay the following rent:

- June 2020- \$707.00; and
- July 2020- \$707.00.

The accounts manager testified that the landlord was able to rent out the subject rental property for August 15, 2020 and is seeking the tenant to pay a pro- rated rent for loss of rental income in the amount of \$319.29 for August 1-14, 2020.

The accounts manager testified that this application for dispute resolution originally sought pro-rated rent in the amount of \$329.29, but this was a computational error.

The accounts manager testified that the landlord is also seeking late payment fees for June and July 2020 in the amount of \$25.00 each and \$8.00 for May 2020's late fee (the tenant paid \$17.00 towards the May 2020 late fee.)

The accounts manager entered into evidence a ledger which confirmed the agent's above testimony.

The accounts manager testified that the landlord's original application sought to collect a \$45.00 fee for cleaning a patio. The accounts manager testified that this was made in error as the subject rental property does not have a patio. The accounts manager testified that the \$45.00 fee was for wall damage. No photographs of the wall damage was entered into evidence. The accounts manager entered into evidence a costing sheet stating that the patio of the subject rental property required cleaning at a rate of \$45.00.

The accounts manager testified that she understood if this claim had to be removed due to the above errors.

### 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.

I accept the undisputed testimony of the accounts manager that the tenant owes the landlord \$1,414.00 in unpaid rent for June and July 2020. 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 45(1) of the *Act* states that a tenant may end a periodic 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, and
- (b) 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.

I find that the tenant provided less than one month’s notice to end tenancy, contrary to section 45(1) of the *Act*.

Policy Guideline #5 states that where the tenant gives less than one month’s notice to end a periodic tenancy, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

I find that the landlord acted expediently to mitigate damages by re-renting the subject rental property for August 15, 2020. I find that the tenant is obligated to reimburse the landlord for loss of rental income resulting from the tenant’s breach of section 45(1) of the *Act*. I therefore award the landlord pro-rated rent for the first 14 days of August in the amount of \$319.29.

Section 12 of the Tenancy Agreement states:

**RENT ARREARS.** By law and as required by this Agreement, the tenant must pay rent in full on or before the date it is due. The tenant may be charged an administration fee of up to \$25.00 for late payment of all or a portion of the rent,

returned or NSF cheques, plus any service fees charged to the landlord by a financial institution.

Section 7(1)(d) of the *Residential Tenancy 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.

Based on the evidence and testimony of the accounts manager, I find that the landlord is entitled to recover \$25.00 per instance of late rent. Based on the ledger entered into evidence I find that the tenant owes \$58.00 in late fees.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I decline to amend the landlord's application for dispute resolution to change the \$45.00 claim from patio cleaning to wall damage as I find that the tenant was not provided with the opportunity to respond to the claim for wall damage. I find that in the circumstances, the tenant could not have reasonably anticipated the change.

I dismiss the landlord's claim for \$45.00 for cleaning the patio as the accounts manager testified there was no patio.

Section 38(4) of the *Act* states:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant authorized the landlord in writing, on the move out condition inspection report, to retain his entire security deposit in the amount of \$347.50.

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.

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
June – July unpaid rent	\$1,414.00
August loss of rental income	\$319.29
Late fees	\$58.00
Filing Fee	\$100.00
Less security deposit	-\$347.50
<b>TOTAL</b>	<b>\$1,543.79</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: January 28, 2021

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Residential Tenancy Branch