



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 MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act of \$7,850.00, retaining the security deposit for this claim; and to recover the cost of their Application filing fee.

An agent for the Landlord, T.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and the Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents and their evidentiary submissions by Canada Post registered mail, sent on April 9, 2021. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and

evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided her email address in the Application, and she provided the Tenant's email address in the hearing. The Agent confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the details of the tenancy, which indicated that the fixed-term tenancy began on February 15, 2020, and was to run to February 28, 2021, with a monthly rent of \$1,540.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$770.00, and no pet damage deposit.

The Agent submitted a monetary order worksheet with the amounts she claims the Tenant owes the Landlord in unpaid rent and insufficient funds charges, as follows:

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
May 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
June 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Sept. 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Sept NSF Fee	\$50.00	\$0.00	n/a	\$50.00
Oct 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Oct NSF Fee	\$50.00	\$0.00	n/a	\$50.00
Nov 2020	\$1,540.00	\$0.00	n/a	\$1,540.00

Nov NSF Fee	\$50.00	\$0.00	n/a	\$50.00
		TOTAL OWING		\$7,850.00

The Agent said that the Landlord sent the Tenant a repayment plan by registered mail on September 16, 2020; however, the Agent said that the Tenant did not comply with the plan, and therefore, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. She said the Tenant moved out on December 31, 2020; however, the Landlord did not claim rent for December 2020.

The tenancy agreement sets out that the Landlord charges a late payment fee of \$25.00, and a \$25.00 fee for non-sufficient funds and returned cheques (N.S.F.). I infer the \$50.00 fees noted in the monetary order worksheet include both of these fees.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In terms of the Landlord's late rent fee, the *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) 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;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

I find that the Landlord has charged the Tenant an administration fee for the return of the Tenant's cheques in September and October 2020, as well as a late payment fee. However, I find that pursuant to section 7(1)(d) of the Regulation, that a landlord is authorized to charge one **or** the other of these fees, but not both. Accordingly, I reduce the award for the Landlord by \$25.00 in each of September, October, and November.

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Tenant did not attend the hearing to testify as to why his rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct any portion of the monthly rent of \$1,540.00 for May through November 2020.

Based on the evidence before me overall, I find that the Landlord is eligible for compensation based on unpaid rent and insufficient funds bank fees. I, therefore, award the Landlord with **\$7,850.00** from the Tenant, pursuant to section 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$770.00 in partial satisfaction of the Landlord's monetary claim.

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
May 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
June 2020	\$1,540.00	\$0.00	n/a	\$1,540.00

Sept. 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Sept NSF Fee	\$50.00	\$0.00	n/a	\$25.00
Oct 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Oct NSF Fee	\$50.00	\$0.00	n/a	\$25.00
Nov 2020	\$1,540.00	\$0.00	n/a	\$1,540.00
Nov NSF Fee	\$50.00	\$0.00	n/a	\$25.00
Filing Fee	\$100.00			\$100.00
			Sub-Total	\$7,875.00
Security Deposit	\$770.00			(\$770.00)
			TOTAL AWARDED	\$7,105.00

Given their predominantly successful Application, I also award the Landlord with recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

The Landlord is awarded \$7,875.00 for this Application from the Tenant, pursuant to section 67 of the Act. The Landlord is authorized to retain the Tenant's \$770.00 security deposit in partial satisfaction of the award. I grant the Landlord a Monetary Order for the remaining award owing in the amount of **\$7,105.00** from the Tenant.

Conclusion

The Landlord is successful in their Application for \$7,775.00, as they provided sufficient evidence for recovery of this amount of unpaid rent and insufficient funds bank fees. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant for a total award of \$7,875.00.

The Landlord is authorized to retain the Tenant's \$770.00 security deposit in partial satisfaction of the award. The Landlord is granted a Monetary Order for the remaining amount owing of **\$7,105.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 12, 2021

Residential Tenancy Branch