



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On April 16, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agent (the “Landlord”) attended the conference call hearing; however, the Tenant did not attend at any time during the 26-minute hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on April 30, 2021. The Landlord stated that, according to the Canada Post website, the package was delivered to the Tenant at their forwarding address. The Landlord provided the tracking number, as noted on the face page of this Decision. Based on the above, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

The Landlord was provided the opportunity to present their affirmed testimony and documentary evidence at the hearing.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

The Landlord provided the following affirmed testimony and documentary evidence:

- The one-year, fixed-term tenancy began on April 18, 2016 and continued as a month-to-month tenancy. The rent was \$1,314.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$575.00.
- On March 31, 2021, the Tenant provided written notice that the tenancy would be ending.
- The Tenant did not pay rent for April 2021.
- The Tenant moved out of the rental unit on April 8, 2021.
- Submission of bank statements that showed a preauthorized payment of \$1,314.00 was stopped/recalled.
- The Tenancy Agreement included a term for both late payments and non-sufficient funds; both subject to a minimum service charge of \$25.00.

The Landlord is claiming a loss for the unpaid rent for April 2021, in the amount of \$1,314.00. Also, the Landlord is claiming a loss of \$50.00 for insufficient funds and late payment for the April 2021 rent.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, in this case, the Landlord.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

In this case, I find that the Tenant was in a month-to-month tenancy and would have had to provide one month's notice to end the periodic tenancy, pursuant to section 45(1) of the Act. Based on the evidence before me, I find that the Tenant did provide written

notice to end the tenancy to the Landlord, and that notice would have been effective for April 30, 2021. Therefore, I find that the Tenant is responsible for paying the April 2021 rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due on April 1, 2021 and is in arrears for the amount of \$1,314.00. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

With respect to the Landlord's claim for the insufficient funds fee, I find it important to note that section 7 of the *Residential Tenancy Regulations* states that a landlord may charge a non-refundable service fee charged by a financial institution for the return of a tenant's cheque as long as this is outlined in the tenancy agreement. As the Tenancy Agreement submitted into evidence lists a term related to these fees, I am satisfied that the Landlord has complied with the Regulations with respect to these fees and as such, I grant the Landlord their claim of \$50.00.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for compensation in the amount of \$1,364.00.

I find that the Landlord's Application has merit, and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$575.00, in partial satisfaction of the monetary claim.

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$889.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order for \$889.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: October 19, 2021

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Residential Tenancy Branch