



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Newport Village Courtenay Developments
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, 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;
- 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 1:53 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that he was not recording this dispute resolution hearing.

The agent confirmed the landlord's email address for service of this decision and order.

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on July 22, 2021. A registered mail receipt stating same was entered into evidence. The Canada Post website states that the

above documents were delivered on July 31, 2021. I find that the above documents were served on the tenant in accordance with section 88 and 89 of the *Act*.

Preliminary Issue- Amendment

The landlord's application for dispute resolution contains a typo in the landlord's name. The agent confirmed the correct spelling in the hearing. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to correctly spell the landlord's name.

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 the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on October 15, 2020 and ended on July 9, 2021 by bailiffs enforcing the Order of Possession granted the landlord in a previous Residential Tenancy Branch Decision. The previous file number is located on the cover page of this decision. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. Parking fees in the amount of \$50.00 per month were payable on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were 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 agent testified that in the previous Decision dated June 10, 2021, the tenant was evicted for nonpayment of April 2021's rent. The landlord testified that in addition to the Order of Possession, he was awarded a Monetary Order for April 2021's rent.

The agent testified that a move in condition inspection report was completed with the tenant on October 15, 2020 and a move out condition inspection report was completed with the tenant on July 9, 2021. The move in and out condition inspection reports signed by the tenant and agent(s) of the landlord were entered into evidence. The security deposit statement signed by the tenant on July 9, 2021 reads in part:

BALANCE DUE TENANT \$875
BALANCE DUE LANDLORD \$5,035

I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount.

The previous decision found that the tenancy ended on April 27, 2021. The agent testified that rent payments between May 1, 2021 and July 9, 2021 were made as follows:

- May 18, 2021: \$950.00
- May 31, 2021: \$500.00
- July 3, 2021: \$600.00
- **Total: \$2,050.00**

The agent entered into evidence an account summary confirming the above testimony.

The agent testified that the tenant did not pay the \$50.00 per month parking fee from April to July 2021 and owes \$200.00 in parking fees. An account summary confirming same was entered into evidence.

The agent testified that the landlord is seeking to recover late rent fees in the amount of \$25.00 per month for the months of April to July 2021 which total \$100.00.

Section 12 of the tenancy agreement states that the tenant may be charged an administration fee of up to \$25.00 for late payment of rent.

Analysis

Based on the agent's undisputed testimony and the account summary entered into evidence, I find that tenant paid the landlord \$2,050.00 in occupancy fees from May to July 2021.

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

Pursuant to Residential Tenancy Policy Guideline #3 I find that the landlord is entitled to \$1,750.00 per month in occupancy fees for May and June 2021 and compensation for July 2021's occupancy on a per diem basis from July 1-9, 2021 as follows:

$$\$1,750.00 / 31 \text{ (days in July)} = \$56.45 * 9 \text{ (July occupancy)} = \$508.05$$

I find that the tenant owed \$4,008.05 in occupancy fees from May 1 to July 9, 2021 and only paid \$2,050.00 in occupancy fees. I therefore find that the tenant owes the landlord \$1,958.05 in occupancy fees.

Based on the agent's undisputed testimony and the account summary entered into evidence I find that the tenant did not pay the \$50.00 per month parking fee at set out in tenancy agreement, from April to July 2021. I find that the landlord is entitled to \$50.00 per month for April, May and June and a per diem rate for July 2021 as follows:

$$\$50.00 / 31 \text{ (days in July)} = \$1.61 * 9 \text{ (July occupancy)} = \$14.49$$

The total owed the landlord for parking fees is \$164.49.

Based on the agent's undisputed testimony and the account summary entered into evidence, I find that the tenant was late paying rent/occupancy fees from April to July 2021.

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.

I find that the tenancy agreement provided for a late rent fee of \$25.00. Pursuant to the tenancy agreement and section 7(1)(d) of the *Regulation*, I find that the landlord is entitled to late rent fees for April to July 2021 totalling \$100.00 because rent/occupancy fees were late for each of those months.

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

- (4)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.

Based on the move out condition inspection report I find that at the end of the tenancy the tenant agreed in writing that the landlord may retain the tenant's security and pet damage deposit. Pursuant to section 38(4) of the *Act*, I find that the landlord is entitled to retain the tenant's security and pet damage deposits.

As the landlord was successful in this application, 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 landlords under the following terms:

Item	Amount
Occupancy fees May 1 to July 9, 2021	\$1,958.05
Parking fees April 1 to July 9, 2021	\$164.49
Late rent fees May to July 2021	\$100.00
Filing Fee	\$100.00
Less security deposit and pet damage deposit	-\$1,750.00
TOTAL	\$572.54

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 17, 2022

Residential Tenancy Branch