



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0955047 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL MNDCL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$8,500.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to offset any amount owing with the tenant's security deposit and pet damage deposit, and to recover the cost of the filing fee.

The director of the corporate landlord company, BM (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing as per Rule 3.6 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 29, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence (Package) were served on the tenant by registered mail on December 30, 2021. A registered mail tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the Canada Post online registered mail tracking website the tenant signed for and accepted the Package on January 6, 2022. Based on the above, I find the tenant was served on January 6, 2022, the date they signed for and accepted the registered mail Package.

Given that the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rule 7.3.

### Preliminary and Procedural Matters

The landlord confirmed that the amount claimed of \$8,500.00 was incorrect and should have been \$4,200.00 plus the \$100.00 filing fee. Given the above, and pursuant to section 64(3)(c) of the Act, I amend the landlord's application to \$4,300.00 as I find a reduction of the claim does not prejudice the tenant.

In addition, the landlord confirmed their email address and was advised that the decision and any resulting order would be sent by email to the landlord. The decision will be sent by regular mail to the tenant as an email address for the tenant was not known to the landlord.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted for my consideration. A fixed-term tenancy began on August 1, 2020 and converted to a month-to-month tenancy after August 31, 2021. The monthly rent was \$1,400.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 which I will hereafter refer to as \$1,400.00 combined deposits.

The landlord testified that the tenant has failed to pay rent as follows:

- \$1,400.00 owing for June 2021 rent
  - \$1,400.00 owing for July 2021 rent
  - \$1,400.00 owing for August 2021 rent
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**TOTAL OWING = \$4,200.00**

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2021, and with an effective vacancy date of July 18, 2021. The landlord stated that the tenant overheld the rental unit and did not vacate until August 31, 2021.

### Analysis

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

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

#### **Rules about payment and non-payment of rent**

26(1) **A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

[emphasis added]

Section 46(5) of the Act applies and states:

#### **Landlord's notice: non-payment of rent**

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and  
(b) must vacate the rental unit to which the notice relates by that date.**

[emphasis added]

Based on the above, I find the tenant breached section 26 and 46(5) of the Act by failing to pay rent as claimed on the date that it was due and failed to vacate the rental unit by July 18, 2021, which was the effective vacancy date listed on the 10 Day Notice, and which was not disputed by the tenant. As a result, I find the landlord's application is fully successful in the amount of \$4,300.00; comprised as claimed above, and also includes the \$100.00 filing fee pursuant to section 67 and 72 of the Act. **I authorize** the landlord to retain the full combined deposits of \$1,400.00, which has accrued \$0.00 in interest during the tenancy, in partial satisfaction of the landlord's monetary claim.

**I grant** the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$2,900.00**.

**I caution** the tenant not to breach sections 26 and 46(5) of the Act in the future.

### Conclusion

The landlord's application is fully successful. The landlord has established a total monetary claim of \$4,300.00 as described above. The landlord is authorized to retain the tenant's full combined deposits of \$1,400.00.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$2,900.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant has been cautioned as described above. The tenant is further cautioned that they can be held liable for all costs related to enforcement of the monetary order.

This decision will be sent by email to the landlord and by regular mail to the tenant. The monetary order will be sent by email to the landlord only for service on the tenant.

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: July 26, 2022

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Residential Tenancy Branch