



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on May 12, 2020, wherein the Landlords sought monetary compensation from the Tenant for unpaid rent as well as recovery of the filing fee.

Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:05 p.m. Additionally, 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord, S.G., testified that they served the Tenant with the Notice of Hearing, their Application for Dispute Resolution, and their evidence in support of their claim on May 12, 2020 by posting to the rental unit door.

Although posting to the door is not generally accepted as a means of service for monetary claims pursuant to section 89, pursuant to section 71(2)(c) of the *Act* I find the Tenant was sufficiently served as of May 15, 2020. I make this finding for the following reasons.

At the time the Landlord filed for dispute resolution, the Directors Order, made March 30, 2020, was in effect. This Order permitted email service of documents during the

COVID-19 State of Emergency. The Landlords did not have an email address for the Tenant at the time and as such could not serve the Tenant by email.

The Directors Orders further prohibited personal service.

Further, the Landlords testified that as the Tenant rents the Coach House on their property, any registered mail would be sent to them and not to the Tenant.

The Landlords posted the Notice of Application, Notice of Hearing and evidence in support of their claim on May 12, 2020. Although the Tenant was ordered to vacate the rental unit pursuant to an Order of Possession granted March 26, 2020, the Tenant did not vacate the rental unit. The Landlords obtained the services of a Bailiff who removed the Tenant and the Tenant's belongings on July 27, 2020. When the Landlord entered the rental unit after the Bailiff had left, the Landlords' Application for Dispute Resolution, Notice of Hearing and evidence in support of their monetary claim were in the rental unit such that it was clear the Tenant had received the documents which had been posted on May 12, 2020.

For these reasons I find the Tenant was sufficiently served and I proceeded with the hearing in his absence.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Rules of Procedure* (the "*Rules*"). I have reviewed all oral and written evidence before me that met the requirements of the *Rules*; however, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Relief Sought

The Landlords filed an Application for Dispute Resolution which indicated they sought monetary compensation for unpaid rent and recovery of the filing fee.

Rule 2.2 provides that a claim is limited to what is stated in the Application.

Three months after filing their Application, the Landlord prepared a Monetary Orders Worksheet which set out the Landlords detailed monetary claim. In addition to their claim for unpaid rent, the Landlords also sought compensation for enforcement of the Order of Possession and cleaning and repair costs.

During the hearing the Landlords indicated they had filed an amendment to claim compensation in addition to unpaid rent. Further, while the Landlords gave testimony and provided evidence with respect to these additional claims, the only claim on the Application before me was for unpaid rent and recovery of the filing fee.

Although *Rule 4* provides that a party to a dispute may file an Amendment to their Application for Dispute Resolution to include further claims, such Amendments must be served on the Respondent. In this case, the Landlords did not in fact file such an Amendment. Accordingly, the only claims properly before me are the Landlords' claim for unpaid rent and recovery of the filing fee.

The Landlords are at liberty to file a further Application seeking compensation for cleaning and repair costs as well as the cost to enforce the Order of Possession. The Landlords are reminded that this does not extend the time limit imposed by section 60 of the *Residential Tenancy Act*.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began March 1, 2019. Monthly rent was \$1,600.00 and the Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$200.00.

The tenancy ended pursuant to an Order of Possession granted March 27, 2020. (The file number for that matter is included on the unpublished cover page of this my Decision.) As noted previously in this my Decision, the Tenant failed to move from the rental unit after the issuance of the Order of Possession and was finally removed by the bailiff on July 27, 2020.

The Landlord confirmed that the sum of \$6,400.00 was outstanding for unpaid rent for April, May, June and July 2020.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

Section 26 of the *Act* provides that a tenant must pay rent when rent is due. In this case I find the Tenant failed to pay rent for April, May, June and July 2020 such that the Landlord suffered a loss of \$6,400.00.

While the Landlord originally claimed unpaid rent for April and May only, the Tenant overheld their tenancy such that the Landlord suffered two additional months of lost rent. I find the Landlords' request for these additional months would have been reasonably anticipated by the Tenant and I therefore amend the Landlords' claim, pursuant to *Rule 4.2*, to include June and July. I therefore award the Landlords compensation for four months of unpaid rent.

Having been successful in their Application, I find the Landlords are entitled to recover the \$100.00 filing fee.

Conclusion

The Landlords are entitled to monetary compensation in the amount of **\$6,500.00** for the following:

Outstanding rent for April, May, June and July	\$6,400.00
Filing fee	\$100.00
TOTAL AWARDED	\$6,500.00

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlords to retain the Tenants' \$600.00 security deposit and the \$200.00 pet damage towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$5,700.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 7, 2020

Residential Tenancy Branch