



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BUCCI GARDEN HOMES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on October 14, 2020. The Landlord applied for a monetary order for unpaid rent, a monetary order for compensation for my monetary loss or other money owed, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's Agent (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties agreed that the Landlord's documentary evidence had not been served to the Tenant and that the Tenant's documentary had been served to the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter – Landlord's Documentary Evidence

During these proceedings, the Landlord testified that they had failed to service their documentary evidence package to the Tenant for these proceedings.

Section 3.14 of the Residential Tenancy Branch (RTB) Rules of Procedure require that all documentary evidence submitted by an Applicant must be served to the respondent no later than 14 days before the date of the hearing.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

Both parties were advised that pursuant to section 3.14 of the RTB Rules of Procedure that the Landlord's documentary evidence would not be considered in this decision.

The Landlord immediately requested an adjournment so they could serve their evidence to the Tenant, the Tenant objected to the adjournment request.

After hearing both party's arguments for and against the adjournment of these proceedings, I find that I must decline the Landlord's request for an adjournment as there is no reasonable reason the Landlord should be granted additional time to serve their evidence.

The Landlord substituted service application, requesting permission to serve documents and evidence by Whatsapp, had been granted on November 10, 2020, giving the Landlord 105 days, before the date of these proceedings, to serve their documentary evidence package on the Tenant.

The mere failure of this Landlord to have served their documentary evidence package, to the Tenant, in accordance with the RTB of Procedure and the substituted service order is insufficient grounds to adjourn these proceedings.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The tenancy agreement shows that the tenancy began on January 23, 2017, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The parties agreed that rent in the amount of \$3,750.00 was to be paid by the twenty-fifth day of each month.

The parties agreed that the tenancy ended on August 6, 2020, when the Tenant and other occupants of the rental unit were removed from the rental unit by a bailiff.

The Landlords testified that the Tenant had not paid the full rent due for the tenancy before the tenancy ended and that \$12,825.00 remains outstanding; \$3,000.00 in rent for April 2020, \$2,800.00 in rent for May 2020, \$3,275.00 in rent for June 2020 rent and \$3,750.00 in rent for July 2020.

The Tenant agreed that they have not paid the full rent for April, May, June, and July 2020 and that they owe unpaid rent.

The Landlord testified that it cost them \$4,859.36 in bailiff fees and \$2,625.00 in property management ejection fees to have the tenancy ended. The Landlord is requesting the recovery of their costs to end this tenancy and have the Tenant removed from the rental unit.

The Tenant testified that they had no idea the Landlord was trying to end the tenancy, as they had been out of town for a large portion of the ejection process. The Tenant testified that they agreed that the tenancy had ended due to a bailiff attending the rental unit and removing them but that they had no idea what was going on at the time and that they have no idea what the cost are for that the Landlord is claiming for in these proceedings.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

***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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

(4) *Subsection (3) (a) does not apply if*

*(a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the agreed-upon testimony of these parties that the full rent has not been paid for April, May, June, and July 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$12,825.00, comprised of \$3,000.00 in rent for April 2020, \$2,800.00 in rent for May 2020, \$3,275.00 in rent for June 2020 rent and \$3,750.00 in rent for July 2020.

As for the Landlord's claim for compensation in the amount of \$4,859.36 for bailiff fees and \$2,625.00 for property management ejection fees, awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant's breach of section 26 of the Act did result in a financial loss to the Landlord; however, as there is no evidence before me to prove the value of those losses, I find that I must dismiss the Landlord's claim for court bailiff fees and for property management ejection fees in their entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$12,925.00, consisting of \$12,825.00 in unpaid rent and the recovery of the \$100.00 filing fee for this hearing.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$12,925.00**. 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.

The remainder of the Landlord's claim is dismissed without leave to reapply.

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: February 23, 2021

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Residential Tenancy Branch