



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, OPR, MNRL, MNDL, OPN

Introduction

The landlords sought orders of possession and compensation under the *Residential Tenancy Act* (“Act”). In addition, they sought recovery of the filing fee.

Preliminary Issue 1: Second Named Respondent

It is noted that the landlords’ application included two named respondent tenants, C.C. (“Cory”) and J.C. (“Jordan”). However, in reviewing the landlords’ evidence, and the written Residential Tenancy Agreement in particular, Jordan’s name does not appear anywhere on the tenancy agreement or on the addendum to that agreement. There is no reference to Jordan in any other legal document or communication by which Jordan appears to be a tenant for the purposes of the tenancy.

While it is not lost on me that Jordan appears to have been the spouse of Cory, and that she occupied the rental unit for several months after Cory vacated the property, it does not appear that she was anything other than what is known as an “occupant.” To cite [*Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Tenants*](#):

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

In summary, after considering the landlords’ submissions and documentary evidence, I must conclude that Jordan is not a tenant as contemplated by the Act and relevant policy and she is therefore not a party to this application. Her name is removed from the style of cause of this decision.

Preliminary Issue 2: Service

The landlords attended the hearing, but the respondent tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlords testified that they served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlords submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenant was served by registered mail on January 21, 2022.

Given the evidence before me, it is my finding that (notwithstanding that the tenant permitted the mail to be returned unclaimed) the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

Preliminary Issue 3: Order of Possession

The landlords confirmed that the tenant vacated the property in May or June of 2021 and that his spouse finally left at the end of January 2022. As such, the landlords no longer require an order of possession of the rental unit.

Preliminary Issue 4: Additional Claim for Compensation

It is noted that the landlords submitted a significant amount of additional documentary evidence, including a Monetary Order Worksheet, about two weeks before the hearing. The amounts claimed were additional to the amount originally claimed in the landlords' application. Unfortunately, the landlords were unable to serve this updated amendment to their original claim (because the tenant has since disappeared) and as there was no attempt to serve the respondent these additional amounts cannot be considered at this time. As explained, however, the landlords are at liberty to reapply for these amounts, including any claims for loss of rent, within two years of January 31, 2022.

Issue

Are the landlords entitled to compensation for unpaid rent?

Background and Evidence

The tenancy began February 15, 2021 and rent was \$2,400.00. The tenant paid a \$1,200.00 security deposit and a \$600.00 pet damage deposit, which the landlords hold in trust pending the outcome of this application.

The landlords gave evidence that the tenant did not pay rent for October, November, December 2021, and January 2022. In total, the tenant owes \$9,800.00 in rent arrears.

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.

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.

The landlords' undisputed evidence persuades me to find that the tenant did not pay rent for four months, thereby accumulating \$9,800.00 in arrears. The landlords are thus awarded this amount and the tenant is, pursuant to section 67 of the Act, required to pay this amount to the landlords.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded, I award them an additional \$100.00 in compensation to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain the tenant's security and pet damage deposits of \$1,800.00 in partial satisfaction of the above-noted award.

Further, the landlords are granted a monetary order in the amount of \$8,100.00, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords may enforce the order in the Provincial Court of British Columbia.

Conclusion

The application is granted in part, subject to the preliminary issue outcomes as set out above.

Pursuant to section 38(4)(b) of the Act, the landlords are hereby authorized and ordered to retain the tenant' security and pet damage deposits in full.

I hereby grant the landlords a monetary order in the amount of \$8,100.00, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords may enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 5, 2022

Residential Tenancy Branch