



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, FFL

### Introduction

This hearing was set to deal with the landlord's application for a Monetary Order for unpaid rent.

The landlord was represented by her daughter who has a power of attorney for her mother (herein referred to as the landlord's agent). Two co-tenants were named by the landlord on the Application for Dispute Resolution; however, only one tenant appeared for the hearing.

The landlord's agent testified that the tenants were served by a process server and she received an email from the process server to confirm service. The tenant acknowledged he was served with the proceeding documents but he was uncertain as to whether the other respondent was served. I noted that the landlord had not submitted a copy of the process server's confirmation of service. Further, when I turn to the tenancy agreement, which the landlord submitted as evidence, I note that there is only one named tenant and the signature of only one tenant. The tenant named on the tenancy agreement is the tenant that appeared at the hearing.

In light of the above, I am satisfied the tenant appearing at the hearing is the tenant obligated under the tenancy agreement and he was the respondent served with notice of this proceeding. I am unsatisfied the other named respondent had standing as a tenant under the tenancy agreement and/or was served with notification of this proceeding. Therefore, I amend the style of cause to reflect the tenant named on the tenancy agreement and appearing at the hearing and I exclude the other respondent as a named party to this dispute.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the amount claimed for unpaid rent against the tenant?
2. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement on July 5 and 6, 2017, including a two page addendum. The tenancy agreement provides that the tenant would be provided occupancy and would pay pro-rated rent for the period July 19 – 31, 2017 before the tenancy started on August 1, 2017 for a five year fixed term set to expire on August 1, 2022.

The tenant paid a security deposit of \$2000.00. The property was sold on July 23, 2020 and the security deposit was transferred to the new owner.

The landlord is seeking to recover unpaid rent for the months of May 2020 through July 2020 in the sum of \$5664.00. According to the Monetary Order worksheet prepared by the landlord's agent, this sum was calculated as:

|                           |                |
|---------------------------|----------------|
| Unpaid rent for May 2021  | \$2200.00      |
| Unpaid rent for June 2020 | 2200.00        |
| Unpaid rent for July 2020 | <u>1264.00</u> |
| Total                     | \$5664.00      |

The landlord's agent submitted that the amount of monthly rent payable was set out in a table in the addendum. The landlord's agent testified that rent was reduced from the advertised rate of \$5000.00 per month, for five years, to reflect a kitchen renovation the tenant was authorized to complete at his own expense. The table in the addendum indicates the monthly rent in Year 1 was set at \$4000.00; in Year 2 it was set at \$4200.00; in Year 3 it was set at \$4400.00; in Year 4 it was set at \$4600.00 and in Year 5 it was set at \$4800.00.

The landlord submitted that for the months of May 2020 through July 2020 the tenant paid \$2000.00 each month toward the monthly rent of \$4400.00, leaving a shortfall of \$7200.00 (\$2400.00 x 3).

I asked the landlord to explain why the landlord was seeking the lesser amount of \$5664.00 to which the landlord's agent stated that amount was likely calculated in error but that it may also take into account financial hardship on part of the tenant.

The tenant did not refute or deny the landlord's submissions. Rather, the tenant explained that due to the Covid-19 pandemic he suffered extreme financial hardship as he is in the restaurant business and he did not have any more money to pay the landlord for rent and he does not have any money to pay now.

The tenant stated that the tenancy ended after the property was sold to the new owner. The tenant did not get to benefit from the renovated unit for the five years, as expected, due to the Covid-19 pandemic but the value of the property increased due to his renovation.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally make deductions or withhold rent.

The tenant did not dispute that he paid only \$2000.00 of the \$4400.00 rent payable for the months of May 2020 through July 2020. The tenant did not submit a legal basis for making deductions from rent. Rather, the tenant pointed to the inability to pay due to financial hardship caused by the Covid-19 pandemic.

The inability to pay rent is not a legal basis to find the landlord not entitled to recover the unpaid rent or excuse the tenant from paying the rent under the Act.

During the period of March 18, 2020 through August 17, 2020 a tenant could not be evicted for failure to pay rent under Ministerial Order No. 89 that was issued in response to the Covid-19 pandemic; however, rent obligations were not extinguished or waived in that Ministerial Order or the Ministerial Orders that followed. Rent that was unpaid during this period was subject to Repayment Plans; however, if the tenancy ended or after July 2021 the unpaid rent became payable.

The BC Government also provided rental subsidy payments but I note that in one of the emails the tenant had written to the landlord, he did not qualify for the rent subsidy

because their family income from 2019 was too high. As such, there were no rental subsidy payments sent to the landlord.

While the tenant may be of the position the rental unit increased in value, due at least in part to the renovation he made, it was expected when the tenancy agreement formed that the tenant would benefit from his renovation by way of his use during the five year fixed term and reduced rent payments for those five years. The five year fixed term was not fulfilled after ownership of the property changed and the reason it ended is unknown to me; however, I suspect it may be due to the tenant's inability to pay rent based on his description of his dire financial situation. In any event, I am bound to uphold the Act and the terms of tenancy the parties agreed upon and I do not have authority or jurisdiction to offset the unpaid rent by the renovation costs not recovered by the tenant or the increased value in the property the landlord received, if any. Only the landlord has that discretion.

In the circumstances presented to me, I find the tenant owed \$2400.00 in rent for May 2020 and \$2400.00 for June 2020. I find it likely the rent for July 2020 was pro-rated in the Statement of Adjustments when the property transferred to the new owner on July 23, 2021; however, the landlord did not provide these details. Since the landlord has the burden of proof, given the lack of these particulars, I give the tenant the benefit of the following calculation for unpaid rent for July 2020:

- Rent payable to landlord for July 1 – 22, 2020:  $\$4400 \times 22/31$  days: \$3122.58
- Less: payment received by landlord for July 2020: (2000.00)
- Rent not received by landlord \$1122.58

In keeping with all of the above, I find I am satisfied the landlord suffered a loss of \$5922.58 [ $\$2400.00 + \$2400.00 + \$1122.58$ ] and since the landlord is only claiming the lesser amount of \$5664.00, I grant the landlord's request for \$5664.00 and I award that amount to the landlord.

I further award the landlord recovery of the \$100.00 filing fee.

Conclusion

The landlord's application to recover unpaid rent of \$5664.00 and the \$100.00 filing fee is granted. I provide the landlord with a Monetary Order in the sum of \$5764.00 to serve and enforce upon the tenant.

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 14, 2021

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Residential Tenancy Branch