



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, CNR, MNR, & FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution by the parties. The tenant filed an application disputing a 10 day Notice to End Tenancy Due to Unpaid Rent. The landlord filed an application seeking an Order of Possession and a monetary claim due to the tenant's failure to pay the rent. The landlord also seeks monetary relief related to failure by the tenant to pay money owed for rental of videos through the television system and unpaid utilities. The landlord withdrew their claim for costs related to a plumber and for alleged damaged caused to the rental unit.

The landlord appeared for the hearing and provided affirmed oral testimony. Although the tenant was an applicant and submitted evidence to the landlord and the *Residential Tenancy Branch* and was served with notice of the landlord's application and a copy of the landlord's evidence, the tenant failed to appear for the hearing. I proceeded with the hearing in the tenant's absence.

### Issues(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* and regulations entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

The parties entered into a written tenancy agreement on March 15, 2010 for a tenancy beginning on April 1, 2010. The monthly rent was \$1,000.00 and the tenant was to pay half the cost of the monthly utilities. The tenant paid a security deposit of \$500.00 on March 15, 2010. Included in the rent was the use of the cable; however, the landlord stated that they made an oral agreement that any movies the tenant rented through the video on demand system would be paid by unit per month at the rate of \$5.00 per movie.

On October 4, 2010 the posted a 10 day Notice to End Tenancy Due to Unpaid Rent on the tenant's door because the tenant failed to pay the rent owed of \$1,000.00 on October 1, 2010. On October 7, 2010 the tenant filed an application to have the notice to end tenancy set aside.

The landlord stated that the tenant also failed to pay the full rent owed for September 2010 by \$50.00 and no rent has been received for November 2010. The landlord provided a copy of the utility bills for Hydro and Gas. These bills show the amount of hydro owed for July 2010 to be \$163.72 and the amount of gas owed for August to be \$132.53. The landlord stated that the tenants were responsible for half the utilities owed but regularly paid \$150.00 per month. The landlord stated that their request for \$200.00 in their application was incorrect and should be \$150.00. The landlord did not provide the actual utility bills for October 2010.

The landlord also seeks \$150.00 related to video rentals through the cable system. The landlord provided copies of part of their Telus bills which list the movies rented through the on demand system. The landlord testified that the movies marked were rented by the tenant and based on this amount the amount owed to the landlord is \$144.00. The landlord acknowledged that there was nothing in the tenancy agreement to confirm the verbal agreement; however, the landlord testified in the hearing that the paid for his movie rentals for the months of May, June and July without any dispute.

The landlord stated that the rental unit still appears to have someone in the suite; however, it appears that most of the tenant's possessions have been removed from the rental unit. The landlord requested an Order of Possession effective as soon as possible.

### Analysis

I dismiss the tenant's application. The tenant failed to appear for the hearing and I am satisfied from testimony of the landlord that the tenant failed to pay the rent owed in October for the sum of \$1,000.00. I grant the landlord's oral request for an Order of Possession for the rental unit effective **two (2) days** after the Order has been served upon the tenant.

In note that the landlord often referred to verbal agreements made with the tenant. One verbal agreement was with respect to the rental of movies on the video on demand system. The other agreement was with respect to the payment of utilities at \$150.00 per month. The tenant also refers to an oral agreement in his documentary evidence about

paying a \$150.00 per month for utilities. The tenant does not address whether there was a verbal agreement to rent movies.

With respect to the claim for reimbursement related to video rentals, I found that the landlord's documentary evidence was inconsistent with the oral testimony. On the partial Telus bills provided, the alleged movie rentals go back to June 2010 and these rentals are included in the amount claimed by the landlord. In the hearing the landlord testified that the tenant paid for his movie rentals for the months of May, June and July. Based on this, it appears that the landlord is not clear about what has been paid for with respect to the video rentals. I find that I cannot rely on the amount claimed by the landlord.

In the absence any mention of the video rentals in the tenancy agreement, I cannot accept the landlord's claim of \$150.00. The tenancy agreement clearly includes cablevision as part of the rent and the parties did not clarify in writing that movie rentals would be excluded. Without confirmation from the tenant verifying this verbal agreement, I find that I must rely on the written tenancy agreement which does not contemplate reimbursement for video rentals. I dismiss this portion of the landlord's claim without leave to re-apply.

I also deny the landlord's claim for outstanding utility costs as the landlord failed to provide the actual bills for the October or September 2010. The tenancy agreement states that the tenant will pay one half the utility costs. In practise the parties appear to have agreed to a monthly lump sum payment of \$150.00 for convenience, instead of actually calculating the accurate amount due based on the bills. However, I am bound by the written tenancy agreement not by what the parties did in practise. Therefore, I dismiss this portion of the landlord's claim with leave to re-apply. Once the landlord has the actual utility bills for the months in question they can file a new application for Dispute Resolution.

I accept that the tenant failed to pay the rent owed of \$1,000.00 on October 1, 2010. The landlord also claims that there is an outstanding sum of \$50.00 owed for September 2010; however, this was not included in the notice to end tenancy. The landlord has provided any other evidence to demonstrate that the rent for September 2010 was short, such as a receipt or rent ledger. However, in the absence of any evidence from the tenant to the contrary, I accept the landlord's oral testimony. I also find that the tenant has failed to pay the rent owed for November 2010 for an additional \$1,000.00.

I find that the landlord has established a total monetary claim for the sum of \$2,100.00 comprised on outstanding rent of \$2,050.00 plus recover of the \$50.00 filing fee paid for this application.

### Conclusion

I dismiss the tenant's application.

I have granted the landlord's application in part. I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenants. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$2,100.00**. This Order may be served on the tenants. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 08, 2010.

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Dispute Resolution Officer