



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, CNR, MNDC, RP, LRE, FF

### **Introduction**

This hearing was convened in response to applications filed by both the tenant and the landlord.

In an application filed August 18, 2011 the tenant seeks:

1. To Cancel a Notice to End Tenancy for unpaid rent;
2. A Monetary Order;
3. An Order that the landlord return the tenant's personal property;
4. An Order suspending or setting conditions on the landlord's right to enter the rental unit; and
5. Recovery of the filing fee paid for this application.

In an application filed August 23, 2011 the landlord seeks:

1. A monetary order;
2. An Order of Possession; and
3. An Order to recover the filing fee paid for this application.

I accept that the tenant was properly served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties appeared and were given full opportunity to be heard, to present evidence and to make submissions.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Issue(s) to be Decided**

Is either party entitled to the Orders sought?

### **Background and Findings**

The tenant submits that he has rented the property from the landlord since 2006. There is no written tenancy agreement but the tenancy has been a month-to-month tenancy whereby the tenant pays \$500.00 per month for rent and utilities.

The tenant says the landlord has never issued receipts for rental payments. The tenant says that on July 16, 2010 the landlord obtained a monetary Order from the Residential Tenancy Branch payable by the tenant in the sum of \$6,511.00. The tenant says he knew nothing of the proceedings until served with the monetary Order seeking the \$6,511.00 on or about July 20, 2011.

The tenant submits that he had personally paid \$6,000.00 in full and final satisfaction of all arrears a year earlier on July 30, 2010. Despite this the landlord still took steps to collect on the \$6,511.00 Order. Further, in June 2011 the tenant says the landlord also seized his 1989 Honda Prelude with a value of \$2,000.00. The tenant says the landlord had no authority to take this vehicle. The tenant denies that he owes any monies to the landlord and says that all rents have been paid but the landlord refuses to provide receipts. The tenant also says he was forced to retain a lawyer to file an Application for Review in an attempt to have the Order for \$6,511.00 reviewed. The application was not successful but the tenant has incurred \$1,500.00 legal fees to date with respect to this matter. The tenant therefore seeks to recover \$1,500.00 from the landlord for the legal fees as well as the \$2,000.00 loss he incurred when the landlord took his vehicle.

The landlord says the since the previous hearing in which he was granted a monetary Order in the sum of \$6,511.00 a balance remains owing on that Order of \$461.00 and the tenant has incurred further arrears for which a 10 day Notice to End Tenancy was served on August 15, 2011 calculated as follows:

12 months rent @ \$400.00 per month	\$4,800.00
3 months storage @ \$90.00	270.00
9 months storage @ \$60.00	540.00
9 months insurance @ \$20.00	180.00
12 months utilities @ varied	1,063.00
Total	\$6,853.00
Payment made on account August 2010 to April 2011	-3,050.00
Total Rent and Utilities owing to August 1, 2011	\$4,264.00

In response to the tenant's claim that the landlord does not issue receipts the landlord says he does not issue receipts because the tenant does not pay his rent and other obligations.

The landlord says the vehicle which the tenant now claims has a value of \$2,000.00 was scrap metal and as such was towed off the property and delivered to the auto-wrecker. The landlord says the vehicle had no value whatsoever.

The landlord seeks an order of possession for the unpaid rent and utilities and a monetary award in the sum of \$4,264.00 as detailed above.

### **Analysis and Findings**

I will deal with the landlord's applications first. The evidence shows that on July 16, 2010 a hearing was held in the tenant's absence. Based on the landlord's undisputed testimony the landlord was awarded an Order of Possession and monetary award for unpaid rent and utilities in the sum of \$6,511.00. The tenant attempted to have that Order reviewed but had insufficient grounds for review and the Order was upheld.

As this tenancy has continued since July 16, 2010, it is apparent the landlord did not act on the previous Order of Possession. Now the landlord says that, once again, the tenant has not paid rent for the past year. However, the tenant says his rent was \$500.00 a month and it has been paid in cash but the landlord has not issued receipts. The landlord says the rent is \$400.00 per month plus various other charges and he sets out a detailed claim for rent, insurance and storage charges however there is no written tenancy agreement setting out the actual terms of the tenancy. Further, although the landlord says the tenant did not receive receipts because he did not pay his rent, the parties agree that the tenant did make a substantial payment on the previous Order yet no receipt for that payment has been presented in evidence either. Nor has the landlord provided any bookkeeping records. When a party is in the business of being a landlord it is incumbent upon him/her to prepare written tenancy agreements which set out the terms of the tenancy, keep accounting records and provide written receipts for cash rental payments. In this way, if the landlord must make a claim the landlord is able to bring sufficient evidence to prove his/her claim. That the landlord did not take these steps in this particular case is even more confounding when I consider that he has been awarded an Order of Possession previously based on a claim of unpaid rent. Despite this he did not act upon ending the tenancy. If this tenant does not pay his rent as the landlord says, I question why the landlord allowed this tenancy to continue. Overall I am not satisfied that the landlord, who has the burden of proving his claims, has met that burden. I therefore dismiss the landlord's applications and allow the tenant's claim

to cancel the Notice to End Tenancy issued in this matter. The effect of this decision is that this tenancy shall continue as though no notice had been issued.

With respect to that portion of the landlord's monetary claim in the sum of \$461.00 as that sum was awarded in the previous proceeding enforcement proceedings must be made in the Provincial Court of British Columbia – Small Claims Division.

With respect to the tenant's claims they too are dismissed for the following reasons:

With respect to the tenant's claim for legal fee recover, there is no requirement to hire legal counsel for these proceedings and that the tenant chose to do so is his choice to make and his cost to bear.

With respect to the tenant's application seeking that the landlord return his personal property the evidence the tenant has presented insufficient evidence to show what personal property he wished to have returned. If that personal property was the Honda Prelude, the evidence that I accept is that this vehicle has been destroyed and cannot be returned. With respect to the claim for the Honda Prelude, I find that the tenant has failed to bring sufficient evidence to prove the value of this vehicle.

With respect to the landlord's claim for an Order suspending or setting conditions on the landlord's right to enter the rental unit the tenant has failed to bring sufficient evidence to show cause why this order should be made.

As neither party has been successful in their claim I will not award fee recovery in either case.

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: September 19, 2011.

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Residential Tenancy Branch