



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, MNDC

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to financial compensation from the Landlord for cleaning the rental unit.

### Background and Evidence

The Landlord stated that she gave the keys to the Tenant on February 05, 2011; that she understood the Tenant would be moving into the rental unit on February 15, 2011; that she understood the Tenant would not be required to pay rent for the period between February 15, 2011 and February 28, 2011 in exchange for cleaning the rental unit at the start of the tenancy; that she told the Tenant that she would not have to repay a personal debt of \$800.00 that had accrued prior to the start of this tenancy in exchange for cleaning the rental unit at the start of the tenancy; that she understood that the Tenant would pay monthly rent of \$500.00 on the first day of each month; and that she understood the first rent payment was due on March 01, 2011.

The Tenant stated that she received the keys on February 11, 2011; that she moved into the rental unit on February 26, 2011; that she understood rent would not be required for February of 2011; that she understood she would be paid \$800.00 for cleaning the rental unit at the start of the tenancy and that this amount would be paid to her upon the sale of the rental unit unless she elected to end the tenancy prior to the sale of the rental unit, in which case she would not have to pay rent for the last month of

her tenancy; that she did not owe a personal debt to the Landlord when this tenancy started, as any money owed to the Landlord had been paid by that time; that she understood she would pay monthly rent of \$500.00 on the first day of each month; and that she understood the first rent payment was due on March 01, 2011.

The Tenant is seeking compensation, in the amount of \$500.00, for cleaning the rental unit.

The Landlord and the Tenant agree that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on December 08, 2011, which declared that the Tenant must vacate the rental unit by December 12, 2011. The parties agree that rent was not paid for December 01, 2011. The Tenant stated that she did not pay the rent because she believed she did not have to pay rent for the last month of her tenancy in exchange for cleaning the rental unit.

The Agent for the Landlord stated that the Tenant told her she needed to move into the rental unit by February 15, 2011; that she believed the Tenant was obligated to pay rent for February 15, 2011 but the Tenant advised her that she did not have to pay rent for February as compensation for cleaning the rental unit; and that the Landlord told her that she was forgiving a debt of \$800.00 in exchange for cleaning of the rental unit.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the parties had an oral tenancy agreement that required the Tenant to pay monthly rent of \$500.00; that the rent was to be paid by the first day of each month; and that the first rent payment was due on March 01, 2011.

After hearing the conflicting testimony regarding compensation for cleaning the rental unit prior to the start of the tenancy, I find that the Tenant has submitted insufficient evidence to show that the Landlord agreed she would not have to pay rent during the last month of her tenancy in exchange for the cleaning.

I favor the evidence of the Landlord over the evidence of the Tenant in regard to their agreement regarding compensation for cleaning, in part, because the Tenant's position is inconsistent with her claim. The Tenant contends that she was either to receive \$800.00 in compensation, in the event that the rental unit sold, or free rent for the last month of her tenancy in the event that the tenancy ended prior to the unit being sold. In these circumstances the Tenant has not paid rent and she is seeking a monetary Order in the amount of \$500.00, which would mean she would receive compensation that is equivalent to \$1,000.00, which is more than she contends was ever promised.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Landlord to be somewhat more probable given the conditions that existed at the time. I simply find it more likely that the parties would have agreed to a payment plan that included the equivalent of two weeks free rent and forgiving a personal debt of \$800.00, over a payment plan that ranged from a cash payment of \$800.00 to the equivalent of one month's free rent, depending upon whether the rental unit was sold. I find it unlikely that a party would agree to a financial compensation package that differs by the equivalent of \$300.00 depending on whether the Tenant moved prior to the sale of the rental unit.

In determining that the Landlord's version of events seems more probable I was influenced, in part, by the fact that the Tenant acknowledged that she had owed a personal debt to the Landlord prior to the start of the tenancy, which lends some credibility to the Landlord's version of events.

When considered in its entirety, I find that the Tenant submitted insufficient evidence to establish that she was not required to pay rent when it was due on December 01, 2011. I therefore find that she was obligated to pay rent of \$500.00 to the Landlord on December 01, 2011.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. The undisputed evidence is that the Tenant was served with a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, on December 08, 2011.

As the Tenant did not pay rent when it was due and she was served with a Notice to End Tenancy, I find that the Landlord had the right to end the tenancy pursuant to section 46 of the *Act*.

### Conclusion

As the Landlord has the right to end this tenancy, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, that is effective two days after it is served upon the Tenant.

I find that the Tenant has submitted insufficient evidence to show that the Landlord owes her \$500.00 for cleaning the rental unit and I dismiss her application for a monetary Order.

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: December 29, 2011.

---

Residential Tenancy Branch