



## Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

### DECISION

Dispute Codes      Landlord: OPR, MNR, MNDC, FF  
Tenant: CNR, FF

#### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and her two witnesses and the tenant. At the outset of the hearing the tenant indicated he had a witness available but during the course of the hearing the tenant decided not to call the witness to testify.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

#### Background and Evidence

The landlord testified the tenancy began in November 2011 for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with no security deposit received from the tenant. The landlord confirmed there was no written tenancy agreement.

The tenant testified that after the tenancy began the landlord asked him to pay rent in instalments on the 1<sup>st</sup> and the 15<sup>th</sup> of each month instead of the full amount on the 1<sup>st</sup> of each month. The tenant also testified that in mid-February 2012 the landlord verbally reduced the rent to \$900.00 as compensation for an altercation between the two.

The landlord testified rent was always due on the 1<sup>st</sup> and she never did agree to two payments per month and that she never reduced the rent in February 2012 or any other time.

The landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 19, 2012 with an effective vacancy date of March 29, 2012 due to \$1,400.00 in unpaid rent. The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The tenant confirmed in his Application that he received the Notice on March 19, 2012 after it had been posted on the door to the rental unit. The tenant applied to dispute the Notice on March 27, 2012.

The landlord originally testified the tenant had not paid any rent for the months of February or March 2012 but that the tenant had paid \$200.00 on or about April 13, 2012. The landlord confirmed that other than the payment in April she had not received any rent since January 2012. The landlord did not provide a ledger recording any rental payments or receipts for either cash or money order payments.

The landlord originally sought compensation in the amount of \$2,400.00 covering unpaid rent for February and March 2012 in the amount of \$1,400.00 and unpaid rent for April 2012 of \$1,000.00. In recognition of the \$200.00 payment of April 13, 2012 the landlord reduced her claim to \$2,200.00.

The tenant testified that he paid February 2012 rent in two instalments: on February 1, 2012 he paid the landlord \$500.00 cash and then \$400.00 in the form of a money order on February 15, 2012. He also testified he paid the landlord \$400.00 cash through a third party on March 2, 2012 and \$500.00 by money order on March 24, 2012. The tenant provided receipts for the March cash payment (from the third party) and the money order.

Prior to this hearing the tenant had received a decision and order granting him some compensation that he was to deduct from a future rent payment as well as a reduced rental amount until the landlord had completed some repairs to the rental unit. The landlord applied for Review Consideration on this decision and was granted a new hearing to be convened on May 1, 2012.

The tenant testified that as a result of the previous decision he did not pay the landlord any rent on April 1, 2012 because he was allowed to deduct \$550.00 according to the decision. He testified that he did provide the \$200.00 to the landlord on April 13, 2012.

After the tenant's testimony the landlord agreed that she had received \$400.00 on March 2, 2012; \$500.00 on March 24, 2012; and \$200.00 on April 13, 2012. The landlord testified that she did not receive any payments in February 2012 at all.

### Analysis

I have reviewed all documentary evidence and testimony and accept that the tenant was served with notice to end tenancy as declared by the landlord. The notice was

received by the tenant on March 19, 2012 and the effective date of the notice was March 29, 2012.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. The burden of proof is on the party making the disputed interpretation.

In the case before me there are two terms of the tenancy agreement that the parties dispute. The 1<sup>st</sup> term is the day that rent is due in the month, I find the tenant has provided no evidence to support his claim that rent was due twice a month instead of only on the first of the month. As such, I find the tenant has failed to establish that rent was due on any date other than that identified by the landlord (1<sup>st</sup> of each month).

In relation to the 2<sup>nd</sup> term disputed, the tenant asserts the landlord reduced the rent to \$900.00 per month in February 2012 due to an altercation between the two. As the landlord disagreed with the tenant's position and since the tenant has provided no evidence to support this claim, I find the rent was not reduced in February 2012.

As a result, regardless of the other facts of this case, and in conjunction with the tenant's own testimony that he only paid the landlord rent totally \$900.00 per month for both February and March 2012, I find that on the date the landlord issued the Notice there was some rent that was unpaid by the tenant.

Even if I were to accept the tenant's testimony that he had paid the landlord a total of \$1,300.00 to the landlord by March 2, 2012 as per my findings above rent was \$1,000.00 per month and due on the 1<sup>st</sup> of each month there was at least some rent due on March 19, 2011 when the landlord issued the Notice.

From the testimony of both parties I accept the tenant did make a payment of \$500.00 on March 24, 2012 and a payment of \$200.00 on April 13, 2012; however I find the tenant failed to pay the rent owed **in full** within the 5 days granted under Section 46(4)(a) of the *Act*. Further I find that since the tenant filed his Application for Dispute Resolution 8 days after he received it he failed to file it within the 5 days granted under Section 46(4)(b).

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

In relation to the amount of rent that is owed to the landlord the matter of the amount of rent that may be owed for April 2012 is currently under dispute as a result of the previous decision noted above that will be re-heard on May 1, 2012 and as such I find the landlord's Application for April rent is premature. I dismiss this portion of the landlord's Application with leave to reapply.

While I have determined the amount of rent per month for February and March 2012 is \$1,000.00 and the parties agree that the landlord has received at least \$1,100.00 from the tenant (\$400.00 - March 2, 2012; \$ 500.00 - March 24, 2012; and \$200.00 - April 13, 2012), there is an outstanding disagreement over the balance of \$900.00.

To be successful in a claim for compensation for lost rent the applicant has the burden to provide sufficient evidence to establish the value of that lost rent. As the tenant disputes the landlord's claim that there remains outstanding rent owed to her, the burden is the landlord to provide evidence to support her claim.

As the landlord did not keep a tenant account ledger or provide receipts to the tenant and keep copies for herself, she has provided absolutely no evidence to support her claim that the tenant has failed to pay rent in the amounts she is claiming for. For the reasons above, I dismiss the portion of the landlord's Application claiming for compensation for rent for the months of February and March 2012 without leave to reapply.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As neither party was fully successful in their Applications, I dismiss both parties claim to recover the filing fee from the other party.

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: April 18, 2012.

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Residential Tenancy Branch