



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord : OPR, MNR, MNSD and FF  
Tenant: MNDC, OLC, LAT, RR and FF

This hearing was convened on applications by both the landlord and the tenant.

By application of April 30, 2012, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on April 22, 2012. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. The request for authorization to retain the security deposit in set off against any balance found to be owed is moot as the deposit was not paid.

By application of April 26, 2012, the tenant seeks an award for damage or loss under the legislation or rental agreement, an order of compliance, authorization to change locks, a rent reduction and recovery of the filing fee for this proceeding.

The tenant was represented by a friend who stated that the tenant was attending a funeral. She stated that the tenant's omission of the item, "Cancel a Notice to End Tenancy" on her application was not an oversight, did not request her application be amended, and gave assurance that the tenant would be vacated by May 31, 2012.

### Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld with an Order of Possession, and whether and in what amount the landlord is entitled to an award for the monetary claims submitted. Depending on the disposition of the landlord's application and whether the tenancy end is imminent, the tenant's application requires decisions on whether the awards and remedies sought are warranted.

### Background and Evidence

This tenancy began on April 1, 2012 under a one-year fixed term rental agreement signed on March 29, 2012. Under the agreement rent is \$2,400 per month, due on the first of the month and the tenant committed to pay a security deposit of \$1,200 on April 1, 2012.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of April dated April 19, 2012 was served when the tenants cheques for both the security deposit and the April rent were returned NSF.

The landlord stated that the tenant remains in possession of the rental unit, the April rent and security deposit remain unpaid and at the time of the hearing on May 25, 2012, she had not paid the rent for May 2012.

The tenant's representative referred to receipts submitted into evidence the day before the hearing, and therefore late, which show rent of \$2,400 was paid in cash on April 1, 2012 and on May 1, 2012.

The landlord stated that no rent had been paid in cash and referred to copies of cheques, both bearing a bank stamp stating "item dishonoured," one for \$1,200 (security deposit) dated March 30, 2012 and the other dated April 1, 2012 for \$2,400 (April rent).

The landlord also submitted a copy of her bank statement issued on April 16, 2012 noting returned cheques in the cited amounts on April 9, 2012 and April 11, 2012.

In addition, the receipts submitted by the tenant are not signed and the landlord's name is printed in the area used for signature. The landlord stated that she uses Mandarin characters in her signature as she did when the rental agreement submitted into evidence.

### Analysis

I find the evidence of the landlord to be proven with respect to the security deposit and April rent and to be patently credible with respect to the claim for May rent.

I find the receipts submitted by the tenant to be fraudulent.

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant has made application to contest the notice but that she did not pay the rent within five days of receiving it and she has not paid any rent in the interim.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding as follows:

Rent for April 2012	\$2,400.00
Filing fee	<u>50.00</u>
<b>TOTAL</b>	<b>\$4,850.00</b>

As to the tenant's application, I find no evidence in support of any of the claims except for the previously cited receipts. Therefore, the tenant's application is dismissed without leave to reapply.

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

The landlord's copy of this decision is also accompanied by a Monetary Order for \$4,850, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant's application is dismissed without leave to reapply.

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: May 25, 2012.

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Residential Tenancy Branch