



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent; a monetary Order for unpaid rent from April, May, and June of 2012; to retain all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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 relevant submissions to me.

The Agent for the Landlord stated that the Application for Dispute Resolution was mailed to each Tenant, via registered mail, on July 12, 2012. The Tenants contend they were unable to pick these packages up from Canada Post as the Landlord had reversed their surnames when he addressed the envelopes. The Tenants were able to obtain these documents directly from the Residential Tenancy Branch.

The Landlord's Application for Dispute Resolution has been amended to show the correct names of the Tenants, as provided at the hearing.

### 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 from April, May, or June of 2012; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 09, 2010; that the Tenant is required to pay monthly rent of \$600.00 by the first day of each month; and that the Tenant paid a security deposit of \$300.00.

The Agent for the Landlord stated that the Tenant paid no rent in April of 2012; that on May 10, 2012 the Tenant paid \$400.00 in rent, which was applied to outstanding rent from April of 2012; that the Tenant paid no rent for May of 2012, June of 2012, or July of 2012.

The Tenant with the initials "J.K." stated that rent was paid, in cash, to the onsite manager as follows:

- March 31, 2012 - \$150.00 for April of 2012
- April 7, 2012 - \$150.00 for April of 2012
- April 13, 2012 - \$150.00 for April of 2012
- April 27 2012 - \$150.00 for April of 2012
- May 05, 2012 - \$150.00 for May of 2012
- May 11, 2012 - \$150.00 for May of 2012
- May 20, 2012 - \$150.00 for May of 2012
- May 26, 2012 - \$150.00 for May of 2012
- June 02, 2012 - \$150.00 for June of 2012
- June 08, 2012 - \$150.00 for June of 2012
- June 16, 2012 - \$150.00 for June of 2012
- June 23, 2012 - \$150.00 for June of 2012
- June 27, 2012 - \$150.00 for July of 2012
- July 07, 2012 - \$150.00 for July of 2012

The Agent for the Landlord stated that whenever the onsite manager collects rent in cash a receipt is provided; that the Tenant typically paid rent in cash; and that the Tenant was provided with receipts when rent was paid. The Landlord did not submit copies of receipts to corroborate this testimony.

The Tenant with the initials "J.K." stated that they sometimes received receipts for cash payments but they have received no receipts since January of 2012.

The Agent for the Landlord stated that on June 02, 2012 he personally served the Tenant with the initials "A.M." with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 12, 2012, The Tenant with the initials "J.K." stated that she located this Notice in their mail box on June 03, 2012.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$600.00 by the first day of each month.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the claim for unpaid rent, the burden of proving that rent was not paid rests with the Landlord. I find that the Landlord has

submitted insufficient evidence to establish that the Tenant has not paid rent, in full, for April, May, or June of 2012.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. In these circumstances the Landlord also bears the burden of proving that receipts were provided when rent was paid in cash. I find that the Landlord has submitted insufficient evidence to establish that rent receipts were provided whenever rent was paid in cash. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of a recent rent receipt, which corroborates the Agent for the Landlord's testimony that rent receipts were always provided or that refutes the Tenant's testimony that rent receipts have not been provided since January of 2012.

Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

I find that the Landlord's failure to provide evidence of receipts for cash payments has significantly impaired the Landlord's ability to prove that the Tenant did not pay rent, in cash, in April, May, and June of 2012. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate the claim that the Tenant did not pay rent for these months. On this basis, I dismiss the Landlord's claim for compensation for unpaid rent from April, May, and June of 2012.

I note that I have made no determination regarding rent from July of 2012, as the Landlord did not claim rent for July in this Application for Dispute Resolution.

On the basis of the testimony of the Tenant, I find that the Tenant with the initials "J.K." located a Ten Day Notice to End Tenancy in her mail box, served pursuant to section 46 of the *Act*, on June 03, 2012. Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy.

On the basis of the testimony of the Tenant, I find that the Tenant did not pay all of the rent that was due on June 01, 2012 until June 23, 2012, which is more than five days after the Notice to End Tenancy, was received. I have no evidence that the Tenant filed an application to dispute the Notice to End Tenancy. I therefore find that the Tenant accepted that the tenancy has ended, pursuant to section 46(5) of the *Act*, and I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

As the Landlord has failed to establish a monetary claim, I dismiss the Landlord's application to apply the security deposit to rent due for April, May, or June of 2012.

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: July 16, 2012.

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Residential Tenancy Branch