



# 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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, 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 present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

The landlord testified that the Notice of Hearing package and evidence was sent to the tenant's address, via registered mail, on June 22, 2012. A copy of the Canada Post receipt and tracking number was supplied as evidence. During the hearing the landlord checked the Canada Post tracking web site and determined that the tenant had retrieved the registered mail on June 9, 2012.

Initially, the tenant testified that he received the Notice of Hearing package only 48 hours prior to the hearing; on July 11, 2012. After the landlord checked the Canada Post site the tenant altered his testimony and stated he had received the Notice of Hearing package, evidence and a copy of the 10 Day Notice to End Tenancy for Unpaid Rent on June 9, 2012.

The application was amended to include a claim for unpaid July, 2012, rent.

During the hearing the tenant was provided with the Residential Tenancy Branch facsimile number; he confirmed receipt of the correct number. I directed the tenant to submit a copy of a June, 2012, Bank Draft payment the tenant said was made to the landlord in the sum of \$600.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2009; rent is currently \$885.91, due on the first day of each month. A deposit in the sum of \$420.00 was paid.

The landlord provided affirmed testimony that on June 4, 2012, a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 17, 2012, was served by posting to the tenant's door.

The site administrator testified that he posted the Notice to the tenant's door sometime in the morning on June 4, 2012 and that within the next few days the Notice had been removed from the door. The administrator stated that sometime within 2 weeks of posting the Notice he saw the tenant at the building.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$875.82 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant submitted he has been out of the country and away from home and did not receive a copy of the Notice until July 9, 2012; as part of the hearing package. The tenant thought that perhaps the person he had watering his plants at the unit removed the Notice from his door. The tenant has told the landlord he travels much of the time and expected the landlord would have called him rather than serve a Notice to end tenancy. The tenant stated his bank records would show the dates he had travelled.

The landlord testified that only 1 payment in the sum of \$300.00 was made in June; it was received electronically on June 19, 2012.

The tenant stated that in June he made a \$600.00 payment via a Bank Draft, plus the \$300.00 payment. The \$600.00 payment was left in the mail slot at the office in the building.

The tenant contacted the landlord after he received the hearing package on June 9, 2012, and was told that payment of rent would not make any difference. Later in the hearing the tenant testified that the landlord had refused to take the rent payment he offered. The tenant confirmed that he has not paid July, 2012, rent and that this was also due to the bank changing his account.

Prior to 9 a.m. on July 16, 2012, the tenant submitted a copy of a TD Canada Trust account detail which showed a \$300.00 payment made to the landlord on June 19, 2012. A copy of the Bank Draft for \$600.00 rent payment was not supplied. The bank statement did not indicate any withdrawal in June, in the sum of \$600.00. No records for the dates prior to June 19, 2012, were supplied.

### Analysis

In relation to service of documents, such as the 10 Day Notice to End Tenancy and the Notice of Hearing package I have considered the tenant's submissions and the veracity of those submissions.

During the hearing the tenant altered his testimony; first by providing affirmed testimony insisting that he had received the Notice of hearing package only 48 hours prior to the hearing. Then, in response to the landlord's check of the Canada Post web site, he altered his testimony and stated he had in fact received the Notice of hearing package on June 9, 2012; the date indicated on the Canada Post site.

The tenant initially said that when he enquired with the landlord about paying his rent at some point during the week of July 9, 2012, he was told that payment would not alter the situation. Then, later in the hearing the tenant alleged that the landlord had refused to accept his rent payment.

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 highly probable given the conditions that existed at the time. Considered in its totality, I favoured the evidence of the landlord over the tenant. The tenant altered his

submissions and denied responsibility for the non-payment of rent by placing the blame on his bank and the landlord's refusal to accept rent payment. The tenant said he was not at home and that service of documents failed as the landlord did not take time to contact him, as the landlord knew he was away. The tenant also said he had paid the balance of joint rent owed via a Bank Draft.

I found the tenant's submission lacked credibility and consistency. A reasonable person would not accept that a landlord would apply requesting compensation for non-payment of rent and then refuse to accept a rent payment. I found the attempt by the tenant to blame his bank for non-payment of rent was equally unbelievable.

I have also rejected the tenant's submission that he was not served with the documents, as he was away. I found the testimony of the landlord's administrator consistent and reasonable; he posted the Notice, it was removed from the door and he witnessed the tenant at the rental unit building within a few weeks of having served the Notice.

In relation to the failure of the tenant to retrieve registered mail; the tenant attended the hearing claiming that since receiving Notice of the hearing he had tried to pay the rent and was rebuffed; testimony I have rejected as inconsistent and unreliable. Failure to retrieve registered mail does not avoid service and, even if the tenant had not intentionally failed to retrieve the registered mail, he provided no submissions that would alter my decision.

Therefore, I find that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent on the 3<sup>rd</sup> day after it was posted to his door; June 7, 2012.

In relation to the Notice of Hearing package, I find that the tenant is deemed to have received the Notice on the 5<sup>th</sup> day after mailing; June 27, 2012. The tenant did not retrieve the mail until July 9, 2012, which I find provided him with sufficient time to respond to the application. The tenant did not request an adjournment or make any other submission that he was not prepared to proceed with the hearing.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights within 5 days of June 7, 2012; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In relation to unpaid rent, I find that the tenant has failed to pay the balance of \$585.91 June rent owed, plus \$885.91 July, 2012 rent. I have accepted the landlord's testimony that only \$300.00 of June rent was paid. The tenant failed to supply a copy of the Bank Draft which he affirmed would prove payment of June, 2012 rent. The bank statement supplied by the tenant confirmed the landlord's testimony that only \$300.00 was paid toward June, 2012, rent owed.

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,471.82 in unpaid June and July, 2012 rent.

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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$420.00, in partial satisfaction of the monetary claim. No interest has accrued on the deposit.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after it is served to the tenant. The Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,521.82, which is comprised of unpaid June and July, 2012, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$420.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,101.82. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2012.

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Residential Tenancy Branch