



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, CNR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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, 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Landlord and two of the Tenant's 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 Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing for the Tenant with the initials "J.E." were personally served to the Tenant with the initials "T.E." on August 09, 2012. The Tenant with the initials "T.E." agreed that these documents were served to her and that she subsequently served them to the Tenant with the initials "J.E." I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant with the initials "J.E." did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid rent should be set aside; whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord is entitled to a monetary Order for unpaid rent; whether the Landlord is entitled to retain all or part of the security deposit; and whether either party is entitled to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 38, 46(4), 55, 67, and 72 of the *Act*.

### Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit in April of 2012; that they were obligated to pay monthly rent of \$1,600.00 by the first day of each month, with the exception of April of 2012, when rent was only \$1,400.00; and that the Tenant paid a security deposit of \$700.00.

The Landlord and the Tenant agreed that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 22, 2012, was personally served to the Tenant with the initials "T.E." on July 23, 2012. During the hearing the Landlord and the Tenant mutually agreed that this Notice to End Tenancy should be set aside and that this tenancy would end on August 31, 2012.

The Landlord and the Tenant agree that rent was paid in full for April of 2012.

The male Tenant initially stated that on May 04, 2012 he paid \$400.00 rent, in cash; that on May 18, 2012 he paid \$600.00 rent, in cash; and that on May 23, 2012 he paid \$500.00 in rent in cash, at which time his rent was paid in full.

The Landlord stated that on May 05, 2012 he received a rent cheque that was signed by the Tenant with the initials "T.E.", in the amount of \$1,600.00. He stated that he deposited this cheque on May 07, 2012 or May 08, 2012 and that a "couple of weeks later" he learned that the cheque had not been honored by the Tenant's financial institution. The Tenant with the initials "T.E." acknowledged writing this cheque. She stated that she did not learn it had been dishonored by her financial institution until May 23, 2012.

The male Tenant stated that he became aware the cheque in the amount of \$1,600.00 had not been honored by his co-tenant's financial institution on May 04, 2012. He stated that he did not inform the co-tenant that the cheque had not cleared the bank but he began making the cash payments as soon as he discovered the problem. When he was asked why he would have made a cash payment on May 04, 2012 when the rent cheque was not written until the following day, he stated that he was confused on the dates of the payment and that he no longer recalls when the payments were made in May.

The Landlord and the Tenant agree that no rent was paid in June of 2012. The parties agree that \$3,200.00 in rent was paid on July 04, 2012 and that no rent has been paid since that date.

### Analysis

I favor the testimony of the Landlord, who stated that he only received one cash payment, in the amount of \$500.00, for rent in May of 2012 over the testimony of the male Tenant, who stated that he had paid the rent in full by May 23, 2012. I therefore find that the Tenant still owes the Landlord \$1,100.00 in rent for May of 2012.

I favored the testimony of the Landlord over the testimony of the male Tenant in this regard, in part, because the Landlord's testimony in regards to all rent payments was consistent and direct. Conversely, I found that male Tenant's testimony in regards to the May payments was considerably less reliable.

The male Tenant stated that the rent had been paid, in full, by May 23, 2012. He stated that he paid \$400.00 in rent on May 04, 2012, \$600.00 in rent on May 18, 2012, and \$500.00 in rent on May 23, 2012. As these payments only total \$1,500.00 I find that he contradicted his own statement that the rent was paid in full by May 23, 2012.

The male Tenant initially stated that he paid a portion of the rent on May 04, 2012 once he realized his co-tenant's cheque had not cleared her financial institution. It was not until after I pointed out that the cheque had not even been written until May 05, 2012 that he testified he was confused about the dates of his payments and he now could not recall the dates of the payments. Given that he initially testified about the dates of the payments with such certainty, I question the credibility of his testimony regarding any disputed payments. I find the fact that he altered his testimony only after it was shown that his versions of events could not be accurate is reason enough to discount his testimony regarding the May payments.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant did not pay rent for August of 2012. I therefore find that they must pay the Landlord \$1,600.00 in rent for August.

### Conclusion

On the basis of the mutual agreement to end the tenancy on August 31, 2012, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on August 31, 2012. This 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 \$2,750.00, which is comprised of \$2,700.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$700.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,050.00. 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.

I find that the Tenant's claim has been without merit and I dismiss the Tenant's claim to recover the fee for filing an Application for Dispute Resolution.

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: August 23, 2012.

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Residential Tenancy Branch