



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the filing fee.

The landlord, the landlord's grandfather, and the agent for the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Issues to be Decided

- Should the landlord be granted a monetary order for unpaid rent or utilities?
- Should the landlord be permitted to retain all or part of the security deposit?

### Background and Evidence

The parties agreed that a month to month tenancy agreement was signed on August 15, 2011. Rent in the amount of \$1,200.00 was due on the first day of the month. A security deposit of \$600.00 was paid by the tenant, which the landlord continues to hold.

The landlord stated that she received verbal notice from the tenant on April 26, 2012. According to the landlord, the tenant stated that she would be vacating by the end of April, 2012, which was four days notice. The tenant vacated the rental unit on April 30, 2012.

The agent for the tenant stated that the tenant provided written notice that she would be vacating the rental unit, however, did not have the date or other specific details of the written notice. The landlord disputed the agent for the tenant's testimony by stating that written notice was not provided.

The landlord is claiming \$1,200.00 for unpaid rent for the months of March, April and May 2012. The landlord testified that the tenant asked the landlord not to cash the March 2012 rent cheque in the amount of \$1,200.00, as the tenant did not have enough funds in her account for it to clear. The landlord did not cash the cheque as a result. The tenant did not follow up with a cash payment resulting in no rent being paid for March 2012. The landlord testified that later in March 2012, the tenant and the landlord discussed a payment plan for the missed March 2012 rent payment, resulting in the tenant providing a post-dated cheque dated May 1, 2012 in the amount of \$1,400.00, which was cheque #21.

The landlord stated that a cheque was later provided for April 2012 (cheque # 22), however, the cheque "bounced" due to insufficient funds. The agent for the tenant stated that she read notes provided by the tenant for the purposes of the hearing, stating that rent had been paid, however, the agent for the tenant could not provide details of the dates or forms of payment.

The landlord provided details of the April 2012 cheque #22, which was returned by the bank. The landlord provided the cheque number, the amount of \$900.00, the name of the bank, the date on the cheque and the returned banking statement including the date in which it was stamped "insufficient funds". The landlord stated that the cheque was made out for less than the full amount of rent as the tenant routinely paid portions of the rent until the full amount of rent was paid prior to March 2012. The landlord stated that she did not issue receipts for payments made by the tenant in cash.

According to the agent for the tenant, she stated that she thought the tenant was up to date with the rent payments. The parties agreed that no forwarding address was formally provided by the tenant to the landlord.

### Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I prefer the evidence of the landlord over the agent for the tenant, as the agent for the tenant was sixteen years old and did not provide specific details to support her testimony during the hearing. The landlord, however, provided specific details including dates, banking information, cheque numbers, and amounts of rent paid. The tenant was unable to attend the hearing and failed to provide her agent with instructions or specific information on these events. I found the agent for the tenant did not have sufficient knowledge of the tenant's circumstances when providing her testimony.

**Notice from tenant** – The agent for the tenant stated that the tenant provided verbal notice that she would be vacating the rental unit. The landlord disputes the agent for the tenant's testimony. The agent for the tenant did not have a date or other specific details of the written notice. Section 52 of the *Act* states:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the above, I find the agent for the tenant did not provide sufficient evidence of a written notice. Therefore, I accept the landlord's testimony that verbal notice was provided on April 26, 2012. Verbal notice is not effective under the *Act*, and therefore, I **find** that the landlord is entitled to claim for May 2012 rent.

**Claim for March, April and May 2012 unpaid rent** – The landlord testified that rent for the months of March, April and May 2012 were not paid. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I **find** the landlord has met the burden of proof and I award her **\$3,600.00** for unpaid rent consisting of \$1,200.00 for each of the months of March, April and May 2012.

The landlord has succeeded with her application; therefore I award recovery of the filing fee in the amount of **\$50.00**. The total monetary award of **\$3,650.00** meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit.

**Security deposit of the tenant** - The landlord continues to hold the tenant's security deposit of \$600.00, which has accrued no interest since the start of the tenancy. A forwarding address was not provided by the tenant to the landlord.

**I caution** the landlord to comply with section 26(2) of the *Act*. The landlord must provide the tenant with receipts for rent paid in cash.

Section 26(2) of the *Act* states:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

Conclusion

I find that the landlord has established a total monetary claim of **\$3,650.00**. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$3,050.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: September 19, 2012

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Residential Tenancy Branch