



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing the Landlord's Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing the Tenant's Application for Dispute Resolution.

The Tenant's Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's name, as provided at the hearing. The Tenant confirmed that the Tenant's application for a monetary Order was the subject of a dispute resolution hearing on November 15, 2012, in which the Tenant applied for compensation for emergency repairs completed in the rental unit. As the merits of the Tenant's application for a monetary Order has been previously determined, I decline to consider that portion of the Tenant's Application for Dispute Resolution at this hearing.

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.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside or should the Landlord be granted an Order of Possession; is the Landlord is entitled to a monetary Order for unpaid rent; and is either party entitled to recover the fee for filing an Application for Dispute Resolution?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2012; that the Tenant is required to pay monthly rent of \$1,400.00 by the first day of each month; and that the Tenant has only paid \$686.25 in rent for November of 2012.

The Tenant stated that the Agent for the Landlord informed him that he could withhold \$713.75 from the November rent payment. He stated that he has always paid rent on time, which he contends corroborates his statement that he had permission to withhold this amount.

The Agent for the Landlord stated that he did not give the Tenant permission to retain \$713.75 from his rent payment. He stated that the Tenant did have permission to reduce his rent payment in November by \$480.80, which included \$380.80 for repairs to a hot water tank and \$100.00 for cleaning the chimney.

The Landlord and the Tenant agree that on November 02, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit, which had a declared effective date of November 12, 2012. The Notice declared that the Tenant owed \$231.95 in rent that was due on November 01, 2012.

The Agent for the Landlord stated that the Landlord has cashed the rent cheque tendered by the Tenant for rent for December. As the Tenant has paid rent for December, the Landlord is seeking an Order of Possession for December 31, 2012. The Tenant stated that he believes he cancelled the rent cheque that was tendered for December of 2012. The Agent for the Landlord stated that he believes the Tenant inadvertently cancelled the wrong cheque.

The Landlord and the Tenant agree that the Agent for the Landlord informed the Tenant, via email, that rent for December was not being accepted for the purposes of reinstating the tenancy.

The Landlord and the Tenant agree that the Landlord currently owes the Tenant \$162.22 for hydro and that this amount can be deducted from any monetary claim established by the Landlord in these proceedings.

The Tenant contends that the Notice to End Tenancy is frivolous and vexatious.

### Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,400.00 by the first day of each month and that the Tenant only paid \$686.25 in rent for November of 2012.

Section 26 of the *Act* requires a tenant to pay rent when it is due. When a tenant does not pay all the rent when it is due, the burden of proving that the Tenant has the right to withhold all, or part, of the rent rests with the Tenant. I find that the Tenant has submitted insufficient evidence to establish that the Tenant had authority to retain \$713.75 from the rent due on November 01, 2012. In reaching this conclusion, I was heavily influenced by the absence of documentary evidence that corroborates the Tenant's testimony that he had verbal authorization to reduce the rent by \$713.75 or that refutes the Agent for the Landlord's testimony that the Tenant only had permission to reduce the rent by \$480.80.

In determining this matter I note that the Tenant submitted no evidence to show that the Tenant had authorization from the Director of the Residential Tenancy Branch to withhold any portion of the November rent or that any portion of the outstanding rent of \$231.95 was applied to the direct cost of making an emergency repair in the rental unit.

In determining this matter I have placed no weight on the Tenant's testimony that his rent was always paid on time prior to November of 2012, as I do not find that relevant to the current dispute.

As the Tenant has submitted insufficient evidence that the Tenant had the right to withhold \$231.95 from the rent for November, I find that the Tenant must pay this amount to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on November 02, 2012. As I have determined that rent was not paid when it was due and the outstanding rent of \$231.95 remains outstanding, I find that the Landlord has grounds to end this tenancy. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord's application for an Order of Possession.

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

I find that the Tenant's Application for Dispute Resolution is without merit and I dismiss the Tenant's application to recover the cost of the Tenant's Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on December 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 \$281.95, which is comprised of \$231.95 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. As per the agreement made during the hearing, this monetary claim is being reduced by \$162.22 in compensation for money owed to the Tenant for hydro.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$119.73. In the event 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 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: December 10, 2012.

---

Residential Tenancy Branch