



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MNDC, 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 or utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss; 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 female Landlord stated that the Notice of Hearing and Application for Dispute Resolution were mailed to each Tenant, via registered mail, on January 25, 2013. The Tenant in attendance at the hearing stated that both Tenants received notice of this hearing and that she was representing the other Tenant, who is her mother, at the hearing. The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch, a copy of which was not served to the Tenant as evidence for this proceeding. As it was not served to the Tenant as evidence for this proceeding, it was not accepted as evidence.

### **Issue(s) to be Decided**

Is the Landlord is entitled to an Order of Possession; to a monetary Order for unpaid rent and/or utilities; 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 they have a tenancy agreement that requires the Tenant to pay monthly rent of \$1,900.00 by the first day of each month and that the Tenant paid a security deposit of \$950.00.

The female Landlord stated that the Tenant paid \$700.00 in rent for January of 2013 and no rent for February of 2013. The Tenant stated that the Tenant paid \$1,700.00 in rent for January of 2013 and no rent for February of 2013.

The Landlord and the Tenant agree that rent was typically paid in cash and that the Landlord did not provide the Tenant with a receipt for the rent that was paid for January of 2013. The female Landlord stated that the Landlord typically provided receipts for rent and the Tenant stated that rent receipts were never provided.

The Landlord and the Tenant agree that the Tenant is obligated to pay a portion of the utility bills. The female Landlord stated that the Tenant currently owes \$273.74 for utilities. The Tenant stated that she is not certain of how much she owes for utilities, as the Landlord refuses to provide her with copies of the bills. The Landlord did not submit any bills to corroborate this claim.

The female Landlord stated a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 12, 2013, was posted on the door of the rental unit on January 12, 2013. The Tenant stated that the Notice to End Tenancy was not located on the door of the rental unit and the Tenant has never seen a copy of the Notice that was allegedly posted on her door.

### Analysis

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 from January of 2013, the burden of proving that rent of \$1,700.00 was not paid in cash, as claimed by the Tenant, rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. 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. In these circumstances the Landlord's admitted failure to provide a rent receipt for the cash payment made for January of 2013 significantly impairs the Landlord's

ability to prove that the Tenant did not rent of \$1,700.00 in cash in January. The Landlord did not submit any other evidence, such as a copy of a payment ledger or a bank deposit, to corroborate the claim that the Tenant only paid \$700.00 for rent for January.

I therefore find that the Landlord submitted insufficient evidence to show that the Tenant owes \$1,200.00 in rent for January of 2013. On the basis of the testimony of the Tenant, I find that the Tenant owes at least \$200.00 in rent for January of 2013 and \$1,900.00 in rent for February of 2013. As the Tenant is obligated to pay this amount of rent, I find that the Tenant must pay the Landlord \$2,100.00 in unpaid rent.

I find that the Landlord submitted insufficient evidence to establish the amount of utilities that are currently due to the Landlord and I dismiss the claim for unpaid utilities. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as a utility bill, that establishes an amount owing.

On the basis of the testimony of the female Landlord and in the absence of evidence to the contrary, I accept that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on January 12, 2013. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I accept that the Tenant did not locate the Ten Day Notice to End Tenancy that was posted on her door and that she has never seen this Notice. I find it entirely possible that both parties are being truthful and that the Notice was removed by a third party and not given to the Tenant.

Section 46 of the *Act* entitles a Landlord to end a tenancy for unpaid rent by giving notice to end the tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. As the Landlord has failed to establish that the Tenant actually received this Notice, I find that the Notice to End Tenancy is not yet effective. I therefore dismiss the Landlord's application for 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 find that the Landlord has established a monetary claim, in the amount of \$2,150.00, which is comprised of \$2,100.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,150.00. 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.

The Landlord retains the right, pursuant to section 72(3) of the *Act*, to apply the security deposit towards this debt if this debt has not been paid by the end of the tenancy.

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: February 18, 2013

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Residential Tenancy Branch

