



# 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 applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, 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 fee for filing an Application for Dispute Resolution.

The Landlord stated that on, or about, May 16, 2013 she and her husband personally served the Application for Dispute Resolution and Notice of Hearing to the female Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Tenant did not appear at the hearing.

The Landlord stated that the male Tenant was not served with the Application for Dispute Resolution and Notice of Hearing, as she did not understand that a copy of the document was to be served to each respondent.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedures requires that an applicant serve each respondent with the Application for Dispute Resolution and Notice of Hearing. As the Landlord did not serve the male Tenant with copies of the Application for Dispute Resolution Package and Notice of Hearing, the Landlord was given the opportunity to amend the Application for Dispute Resolution or to withdraw the Application. The Landlord opted to amend the Application for Dispute Resolution to include only the female tenant who has been properly served with notice of this hearing. The Application for Dispute Resolution has been amended in accordance with the request of the Landlord.

### Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on October 15, 2011; that the Tenant is required to pay monthly rent of \$1,000.00 by the first day of each month; and that the Tenant paid a security deposit of \$500.00.

The Landlord stated that on April 02, 2013 the Tenant owed \$1,000.00 in rent for April of 2013 and \$100.00 in rent for March of 2013; that on April 30, 2013 the Tenant still owed \$200.00 in rent for April of 2013; that sometime in the first part of May the Tenant had paid all the outstanding rent for April and \$200.00 in rent for May of 2013; that on May 17, 2013 the Tenant paid \$500.00 in rent, leaving a balance owing of \$300.00; that on May 22, 2013 the Tenant paid another \$500.00 in rent, \$200.00 of which was applied to rent for June of 2013; and that the Tenant still owes rent of \$800.00 for June of 2013.

The Landlord stated that on April 04, 2013 the male Landlord personally served the female Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 15, 2013. The Landlord asked that the male Landlord be contacted by telephone to verify this testimony, however an attempt to contact him at the phone number provided was not successful.

Analysis

On the basis of 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 \$1,000.00 by the first day of each month and that the Tenant still owes \$800.00 in rent for June of 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$800.00 in outstanding rent for June of 2013.

If rent is not paid when it is due a landlord may end the tenancy by serving a notice to end tenancy, pursuant to section 46 of the *Act*. The burden of proving service of a notice to end tenancy rests with the landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of this dispute, which is dated April 04, 2013, was served to the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence, such as direct testimony or a written declaration, from the person who allegedly served the Ten Day Notice to End Tenancy on April 04, 2013. I find that I am not able to rely on the Landlord's statement that her husband served the Notice, as her testimony is subject to the frailties of hearsay evidence.

As the Landlord has failed to establish that the Notice to End Tenancy was served to the Tenant, I cannot conclude that the tenancy ended on the basis of that Notice and I dismiss the Landlord's application for an Order of Possession, with leave to reapply on that specific issue.

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

The Landlord has established a monetary claim, in the amount of \$850.00, which is comprised of \$800.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I grant a monetary Order in this amount. 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 has the right to retain from the security deposit an amount of this monetary Order that remains unpaid at the end of the tenancy, pursuant to section 38(3) of the *Act*. This right does not prevent the Landlord from ending this tenancy if this rent remains unpaid.

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: June 05, 2013

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Residential Tenancy Branch

