



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application filed June 3, 2013: OPR; MNR; FF

Tenant's application filed May 30, 2013: OLC; MNR; MNDC; FF

### **Introduction**

This Hearing was convened to consider applications made by both parties. The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks an Order that the Landlord comply with the Act, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

At the outset of the Hearing, the Landlord testified that she served the Tenant with the Notice of Hearing documents by registered mail sent June 4, 2013. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. The Landlord also testified that she mailed copies of her documentary evidence to the Tenant on June 9, 2013.

The Tenant testified that she served the Landlord with the Notice of Hearing documents on May 31, 2013. The Tenant testified that she sent copies of her documentary evidence, along with another copy of her Notice of Hearing documents, by registered mail on June 19, 2013.

I described the contents of each party's evidence package that was provided to the Residential Tenancy Branch. Neither party disputed that they had received all of the other party's documents at the time that I described the documentary evidence. It is important to note that later on in the Hearing, when inconsistencies were pointed out to the Tenant, the Tenant stated that she did not receive any of the Landlord's documentary evidence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession and Monetary Order for Unpaid Rent?
- Is the Tenant entitled to a monetary award for expenses she incurred in making emergency repairs?
- Should the Landlord be ordered to comply with Sections 28(c), 29(1), 30 and 31 of the Act, and is the Tenant entitled to compensation for breach of those Sections by the Landlord?

### **Background and Evidence**

Only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 4, 2013. Monthly rent is \$1,800.00, due the first day of each month. The Tenant was required to pay a security deposit in the amount of \$900.00 at the beginning of the tenancy. Utilities are not included in the rent.

The Landlord testified that she hand delivered the Notice to End Tenancy to the Tenant on May 28, 2013, to the Tenant's uncle. The Tenant stated that she was never served with a Notice to End Tenancy.

The Landlord testified that the Tenant has not paid the security deposit or any rent since she moved into the rental unit. The Landlord stated that the Tenant has not registered hydro in her name. She stated that all of the Tenant's cheques were returned to the Landlord "insufficient funds". The Landlord provided copies of rent receipts, cheques and bank notices in evidence, which indicate:

<u>Tenant's cheque dated</u>	<u>Amount of cheque</u>	<u>Returned NSF</u>
April 2, 2013	\$900.00 (security deposit)	April 26, 2013
April 5, 2013	\$1,600.00 (prorated rent)	April 10, 2013
April 15, 2013	\$1,600.00 (replacement cheque)	April 19, 2013
April 17, 2013	\$1,600.00 (replacement cheque)	April 22, 2013
April 24, 2013	\$1,600.00 (replacement cheque)	
May 1, 2013	\$1,800.00 (rent for May)	

The Landlord stated that the cheque dated April 24, 2013, was also dishonoured, and that she did not attempt to deposit the cheque dated May 1, 2013, because the Tenant promised to pay cash. The Landlord testified that the Tenant did not pay any cash.

She testified that the receipts for cash that the Tenant provided in evidence are fraudulent.

The Tenant testified that she paid cash to the Landlord's agent (the Landlord's mother), because the account on which the cheques were written was closed. The Tenant provided copies of receipts, as follows:

<u>Receipt dated</u>	<u>Amount</u>	<u>Notation</u>
April 2, 2013	\$1,600.00 (April rent)	cash
May 1, 2013	\$1,800.00 (May rent)	cash
June 1, 2013	\$1,800.00 (June rent)	cash

The Tenant stated that the Landlord accessed the rental unit on three occasions without due notice or permission and that the Landlord had illegally changed the locks. The Landlord denied this and provided copies of Notices to access the rental unit in evidence. The Landlord stated that she has not changed the locks to the rental unit.

The Tenant stated that there were leaks in the rental unit. She did not provide any documentation to support her monetary claim in the amount of \$900.00.

### **Analysis**

#### **Is the Landlord entitled to an Order of Possession and Monetary Order for Unpaid Rent?**

With respect to the question of whether or not rent was paid for April, May and June, I find the Landlord's version of events to be more probable than the Tenant's, for the following reasons:

1. The Tenant stated that the cheques she provided to the Landlord bounced because the bank account had been closed. She provided no logical explanation as to why she continued to issue cheques on an account that she knew was closed.
2. The Tenant submitted that she gave the Landlord cash for April's rent on April 2, 2013. However, she also wrote cheques for April's rent on April 5, 15, 17, and 24, 2013. The Tenant provided no logical explanation for why she would continue to write cheques for rent that she had already paid in cash.
3. Both parties provided receipts in evidence. In both cases, the receipts are generic receipts. However, they differ in their appearance and have different type fonts. In addition, the receipts issued by the Landlord contain only the dollar

amount (for example, \$1,600.00), and not the written amount (for example, one thousand six hundred). The copies of receipts provided by the Tenant have both the dollar amount and written amount on them. The printing is very different on the Tenant's receipts than the printing on the Landlord's receipts. The Landlord's signature on the Tenant's copies differs from the Landlord's signature on the Landlord's receipts.

The Tenant's testimony lacked veracity and therefore, where the party's testimony differs, I prefer the testimony of the Landlord.

I find that the Tenant was served with the Notice to End Tenancy on May 28, 2013, pursuant to the provisions of Section 88(e) of the Act. I find that the Tenant did not pay the outstanding rent or file an Application to cancel the Notice to End Tenancy within 5 days of receipt of the Notice. Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on June 7, 2013. The Tenant is overholding and I find that the Landlord is entitled to an Order of Possession **effective two days after service of the Order upon the Tenant** and Monetary Order for unpaid rent in the total amount of \$5,200.00, calculated as follows:

Unpaid prorated rent for April, 2013	\$1,600.00
Unpaid rent for May, 2013	\$1,800.00
Unpaid rent for June, 2013	<u>\$1,800.00</u>
TOTAL	<b>\$5,200.00</b>

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$100.00** filing fee from the Tenant.

Is the Tenant entitled to a monetary award for expenses she incurred in making emergency repairs?

Section 33(5) of the Act states:

A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, the Tenant provided insufficient evidence that there were emergency repairs required; that she gave the Landlord a written account of the emergency repairs;

and that she paid any money for emergency repairs. Therefore, this portion of her claim is dismissed.

Should the Landlord be ordered to comply with Sections 28(c), 29(1), 30 and 31 of the Act, and is the Tenant entitled to compensation for breach of those Sections by the Landlord?

The Tenant provided insufficient evidence that the Landlord had breached Sections 28, 29, 30 and 31 of the Act. I accept the Landlord's testimony, which is supported by documentary evidence, that she provided the Tenant with 24 hour Notice that she was accessing the rental unit. I accept the Landlord's testimony that the locks to the rental unit have not been changed. Therefore, this portion of the Tenant's application is also dismissed.

The Tenant has been unsuccessful in her application and therefore I find that she is not entitled to recover the cost of the filing fee from the Landlord.

### **Conclusion**

The Tenant's application is **dismissed**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$5,300.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 26, 2013

---

Residential Tenancy Branch

