



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: CNR; FF

Landlords' application: OPR; MNR; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The male Landlord and the Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he served the Landlords with his Notice of Hearing documents by registered mail, but he was not sure what day and had lost the registered mail receipt. The Landlord acknowledged receiving the Tenant's Notice of Hearing documents on June 27, 2013. The Tenant did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord.

The Landlord testified that he served the Tenant with the Landlords' Notice of Hearing documents, together with copies of the Landlords' documentary evidence, by registered mail sent June 25, 2013. The Landlord provided the receipt and tracking numbers for the registered documents in evidence.

### **Issues to be Decided**

- Should the Notice to End Tenancy issued June 14, 2013, be upheld or canceled?
- Are the Landlords entitled to an Order of Possession and monetary award for unpaid rent?

### **Background and Evidence**

This tenancy began in May, 2008. Monthly rent is \$1,800.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 at the beginning of the tenancy.

The Landlords served the Tenant with the Notice to End Tenancy by posting the document to the Tenant's door on June 16, 2013. The Tenant acknowledged receiving the Notice on June 16, 2013.

The Landlord testified that the Tenant didn't pay any rent for May, June, or July, 2013. He stated that the Landlords seek a monetary award of only \$5,000.00, because they did not wish to pay the extra \$50.00 to file an application claiming more than \$5,000.00.

The Tenant stated that he moved out of the rental unit "last Friday". He stated that he didn't pay any rent for May, June or July because the Landlord said he didn't have to pay rent. The Tenant stated that the roof was leaking, causing his tools to rust. He stated that he did not have this agreement in writing.

The Tenant stated that the Notice to End Tenancy was not signed by the Landlord and therefore it was not a valid notice to end the tenancy.

The Landlord stated that he could not confirm that the Tenant had moved out because he has not been to the rental unit lately, as he was out of town. The Landlord denied saying that the Tenant didn't have to pay any rent because of repairs that were needed at the rental unit. The Landlord stated that he ran off two copies of the Notice to End Tenancy and that he is certain that he signed both copies, including the one he gave to the Tenant.

The parties discussed getting together to do a move out condition inspection and for the Tenant to return the keys to the rental unit. They decided to do this on July 28, 2013 at 7:00 p.m.

### **Analysis**

The Landlord provided a copy of the Notice to End Tenancy in evidence. I find that it is a valid notice to end the tenancy and that it complies with the provisions of Section 52 of the Act. The Tenant did not provide a copy of the Notice to End Tenancy, and therefore I find that the Tenant has not provided sufficient evidence that the Notice is not in the correct form and content.

The Tenant stated that he has not paid rent because of an agreement that he had with the Landlords. The Landlord denied that there was any such agreement.

Section 26 of the Act requires tenants to pay rent when it is due unless they have a right under the Act to deduct all or a portion of the rent. I find that the Tenant had no such right under the Act to deduct any rent.

Based on the testimony of both parties, I find that the Tenant did not pay rent for the months of May, June and July, 2013, and therefore I dismiss his application to cancel the Notice.

I accept that the Tenant received the Notice to End Tenancy on June 16, 2013. Therefore, I find that the tenancy ended 10 days afterwards, on June 26, 2013. I find that the Tenant is overholding and that the Landlords are entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount claimed of \$5,000.00.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenant.

Further to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit, and accrued interest, towards partial satisfaction of their monetary award. Interest in the amount of \$9.04 has accrued on the security deposit.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent	\$5,000.00
Recovery of filing fee	\$50.00
Less security deposit held by Landlords	<u>-\$909.04</u>
Total	<b>\$4,140.96</b>

### **Conclusion**

The Tenant's application to cancel the Notice to End Tenancy issued June 14, 2013 is **dismissed**.

I hereby provide the Landlords 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 Landlords with a Monetary Order in the amount of **\$4140.96** 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: July 24, 2013

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Residential Tenancy Branch