



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing; only a copy of a 10 Day notice to end tenancy was supplied.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid June and July 2013 rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in May 2013; a tenancy agreement was not signed; rent is \$800.00 per month. In the absence of a written tenancy agreement there was a dispute in relation to the day of the month rent is due. The landlord said the tenancy commenced on May 1 and that rent is due on the 1<sup>st</sup> day of the month; the tenant then said rent was due on the 7<sup>th</sup> or 8<sup>th</sup>.

The tenant paid May 2013 rent in the sum of \$800.00; the parties agreed payment was made on May 10, 2013 and that the landlord gave the tenant a written record of payment. The tenant said the receipt indicated May and June rent had been paid. The tenant read from the receipt which indicated: "Rent paid May and June." The receipt included the landlord and tenant's name, a notation of separate \$800.00 payments for May and June 2013 rent; dated May 10, 2013.

A 10 Day Notice to End Tenancy for Unpaid Rent was issued on June 3, 2013; the Notice had an effective date of June 13, 2013. A copy of the Notice was supplied as evidence. The landlord had given the tenant's adult roommate a copy of the Notice on June 3<sup>rd</sup> or 4<sup>th</sup> and a copy had also been posted to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 for June 2013 rent, within five days. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

Initially the tenant provided vague responses to questions relating to her receipt of the 10 Notice ending tenancy. The tenant said she had not received it; then she agreed that by June 10, 2013 she had received a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 3, 2013. The tenant confirmed that after she received the 10 day Notice she accepted that the tenancy would end and she chose not dispute the Notice. However, the tenant has not yet vacated as she alleges the landlord has reported her to the government agency that provides her with financial assistance, resulting in a termination of payment leaving her unable to move.

The tenant confirmed she has not paid July 2013 rent in the sum of \$800.00.

The tenant was asked to supply the original of the rent payment receipt issued on May 10, 2013. The receipt must be submitted no later than 4 p.m. on July 11, 2013 and if it is not the tenant understands the decision will be issued, regardless.

The landlord said that she has not received June or July 2013 rent in the sum of \$1,600.00 and has requested compensation. The landlord did write the tenant a receipt on May 10, 2013, which indicated that only May 2013 rent had been paid in the sum of \$800.00. Any additional notation on that receipt would be, in the landlord's submission, fraudulent. The landlord did not retain a duplicate copy of the receipt.

Initially the tenant referred to her witness as a roommate; she then said he was also a tenant. The rent paid in May included money given to the tenant by her roommate.

### Analysis

Based on the tenant's testimony, I find that no later than June 10, 2013 the tenant had received the 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 3, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to June 20, 2013.

Therefore, I find that Notice required the tenant to vacate the rental unit by June 20, 2013.

Section 46(5) of the Act provides:

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date*

I have accepted the tenant's testimony that she accepted the Notice and that the tenancy would end. The tenant chose not to dispute the Notice; she did not testify that she failed to dispute the Notice as June rent had been paid; only that she did not vacate as she cannot afford to do so.

The tenant said that she had in fact paid June 2013 rent and, as requested during the hearing, has produced the original copy of a receipt issued by the landlord on May 10, 2013. During the hearing I had explained to the landlord that in the absence of a duplicate copy of the receipt she had issued to the tenant I would require time to allow the tenant to submit the original copy so that it could be viewed. Further, when accepting cash rent payments the legislation requires a landlord to issue a receipt, which would reasonably be in duplicate.

I have examined the receipt provided by the tenant; it included an entry made by the tenant, indicating: "May 10, 2013 paid in full." The tenant signed her name above this notation. The receipt indicated that May rent had been paid; next to this notation another written entry indicated June rent had been paid; each in the sum of \$800.00.

I have considered the value of this note, a copy of which the landlord did not retain for her records. I have taken the landlord's testimony into account; that only May rent had been paid; against the notation made by the tenant, indicating "May 10, 2013 paid in full." The tenant's notation on the receipt does not indicate what had been paid in full; although there is no dispute that May rent was paid.

When making a claim for compensation as the result of unpaid rent, the landlord has the burden of proving that rent was not paid. Even taking into account the landlord's submission that she did not indicate June rent had been paid, I must come to my own conclusion in relation to the validity of the details of the receipt.

In the absence of a duplicate copy of this hand-written receipt and the dispute in relation to what was included on that document, I find that the receipt has little value. I cannot

determine whether or not the tenant has altered the receipt, but in the absence of a duplicate copy I find, on the balance of probabilities, that the receipt cannot be relied upon as an accurate record of a June rent payment.

I have also considered the credibility of the parties, the consistency of the actions of each in relation to the situation related to the payment of rent and the issuing of the Notice. I have also considered the actions of each party to determine if they were reasonable. In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time the Notice was issued and given to the tenant, and considering the actions of each party, I preferred the landlord's testimony over that of the tenant.

The tenant was vague and would not provide straightforward answers in relation to receipt of the 10 Day Notice to end tenancy and it was not until sometime later in the hearing that the tenant said she could produce a receipt showing May and June rent had been paid; what I found to be an unusual submission, when the tenant had already testified she had not disputed the Notice and had accepted the tenancy would end. This leads me to conclude, on the balance of probabilities, that only May 2013 rent had in fact been paid and that the tenant had accepted the tenancy would end as June rent had not been paid. The landlord took the appropriate steps required, by issuing the Notice ending tenancy.

Therefore, I find that the landlord has proven, on the balance of probabilities, that the tenant failed to pay June and July 2013 rent and that the landlord is entitled to compensation in the sum of \$1,600.00.

Therefore, I find that the Notice to end tenancy given to the tenant by June 10, 2013 is of full force and effect and that when the tenant failed to pay June 2013 rent within 5 days of June 10, 2013 she accepted, pursuant to section 46(5) of the Act, that the tenancy was ending.

Therefore, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 20, 2013, pursuant to section 46 of the Act. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

There was no evidence before me to convince me that the witness who lives with the tenant is anything other than an occupant. He may have given the tenant some money toward the rent owed, but he has not paid any rent directly to the landlord.

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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,650.00. 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 has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2013

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Residential Tenancy Branch

