



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, SS, O, FF

### Introduction

The landlord seeks an order of possession but now has possession back and so the claim is redundant. The landlord also seeks a monetary award for unpaid rent for the four months since this tenancy began, a total of \$6800.00.

The tenant admits to the terms of the tenancy of this five bedroom house on one acre of a thirty three acre rural parcel; that it began April 1, 2013 and that the rent was \$1700.00 per month, due on the first of each month. However, there is no written tenancy agreement.

The tenant agrees she hasn't paid any rent. She argues that she assisted the landlord and acted as his agent in the past, but her evidence is far from establishing any term of her tenancy that would have affected her obligation to pay rent as it became due.

Normally in these circumstances and until recently, the landlord would be granted a monetary award for the unpaid rent.

However, the recent decision of the Supreme Court of BC in the case of *Darbyshire v. Residential Tenancy Branch (Director)*, 2013 BCSC 1277 (July 19, 2013) has significant and binding effect on the attempted enforcement of tenancy agreements that are not in writing. In that case, a landlord obtained an order of possession and a monetary award for unpaid rent against a tenant who had not attended the initial hearing. The tenant applied for judicial review and was successful. Mr. Justice Funt considered the mandatory statutory requirement that a landlord prepare a written tenancy agreement, and he considered the scheme of the legislation generally. He concluded that s. 6(3)(c) of the *Residential Tenancy Act* (the "Act"), requiring that in order to be enforceable a term of a tenancy must be "expressed in a manner that clearly communicates the rights and obligations under it," means that a term of a tenancy agreement, including a term regarding the payment of rent, is not enforceable if it is not in writing.

In my view the facts before me in this case are not reasonably distinguishable from the facts in *Darbyshire*. Because the landlord does not have a written term regarding the payment of rent, he cannot enforce a rent payment clause against the tenant.

### Conclusion

The landlord's application for a monetary award for unpaid rent must be dismissed.

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*.

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Dated; August 9, 2013

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Residential Tenancy Branch