



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, OPR, MNR

### **Introduction**

This hearing was convened in response to an application by the tenant **and** an application by the landlord.

The tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End).

The landlord sought an Order of Possession due to unpaid rent, and a Monetary Order to recover rental arrears.

Both parties appeared in the conference call hearing and participated with their submissions, testimony and document evidence. The tenant advised they are still residing in the rental unit.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

Both parties provided an abundance of document evidence. The almost completely disputed testimony of the landlord and the tenant is as follows. The only agreed facts between the parties is that the tenancy began in April 2013.

The tenant claims it started April 01 pursuant to a written tenancy agreement signed on April 31, 2013, the landlord claims it started April 10 pursuant to only a verbal agreement and payment of the security deposit and first month's rent by BC Employment and Assistance – also noting that April 31 is not an existing date.

According to the tenant rent is claimed to be \$700.00 payable on the 1<sup>st</sup> of each month. According to the landlord rent is claimed to be \$800.00 payable on the 1<sup>st</sup> of each month.

The landlord claims that at the outset of the tenancy they collected the first month's rent and a security deposit from the tenant in the amount of \$400.00 on April 10, 2013 for which they provided a copy of the cheque issued by BC Employment and Assistance for this purpose. The tenant claims, by their written tenancy agreement, that at the outset of the tenancy they paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$350.00, on April 15, 2013.

The tenant stated that they, solely, wrote out the tenancy agreement and that the landlord signed the agreement. The tenant claims they did this because the landlord is not able to write. The tenant also acknowledged that they wrote out all of their document evidence containing a myriad of agreements and purported receipts for cash payments and that the landlord and other purported representatives of the landlord simply signed what they wrote out. The tenant claims they did this because the landlord is not able to write. The landlord stated they had no part of a tenancy agreement and did not sign such a document. The landlord's witnesses to this matter stated they at no time signed any of the tenant's written documents and purported agreements and receipts. The landlord wholly disputed the tenant's assertions they are unable to write, and testified they are fully able to write, as provided by their own written evidence to this matter and their application, and that they have never signed any of the tenant's written documents or testaments to payment in cash.

The landlord claims the tenant failed to pay rent in the months of May and June 2013 and the landlord gave the tenant a Notice to End for unpaid rent dated June 03, 2013 and the landlord accepted a promissory note that the tenant would pay the outstanding rent of \$1600.00 – which the landlord claims they did not, and the landlord ignored. The landlord claims the tenant then paid only partial rent of \$650.00 for each of August, September and October 2013 then failed to pay any rent for November and December 2013 and the landlord then gave the tenant a Notice to End Tenancy for unpaid rent claiming all arrears since May 2013 in the sum of \$3650.00. The landlord claims the tenant has also not paid rent for January 2014. The tenant provided their personally authored hand-written statements purportedly signed by the landlord and the landlord's purported representatives accounting for all monetary claims as paid in cash – inclusive of a claim that they overpaid the landlord for each month of their occupancy in the difference of \$100.00 – being the discrepancy of the parties' claim as to the payable rent.

## **Analysis**

Based on the testimony of the tenant it is clear the tenant personally authored all of the evidence upon which they rely to support their assertions they paid the landlord in cash all of the rent payable since the outset of this tenancy. I find I prefer the landlord's evidence that they are able to write. As a result, I find the tenant's assertion they authored all of their documents and evidence because of the landlord's inability to write as not credible. I also find the tenant's evidence the tenancy agreement was signed one month after the start of the tenancy – on a non-existent date – further contributes to the lack of credible weight to the tenant's evidence.

As a result of all the above, I find I prefer the landlord's overall evidence in this matter. I find the parties entered into a verbal tenancy agreement for payable rent of \$800.00 per month and that the landlord collected \$400.00 as a security deposit which they hold in trust. I find the tenant paid rent of \$800 for April and \$800 for July 2013 and further paid rent of \$650.00 for August to October 2013; but, has not paid rent for the balance of the tenancy up to and including January 2014. I find the tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end the tenant has not proven they paid the outstanding rent. Therefore the tenant's application **is hereby dismissed**, without leave to reapply.

Based on the above I find that the landlord is entitled to an **Order of Possession**.

As for the monetary order, I find that the landlord has established a claim for unpaid rent as follows. The security deposit will be off-set from the award made herein.

### ***Calculation for Monetary Order***

Rental Arrears – sum of balance of unpaid rent from May 2013 to January 2014.	\$4450.00
Less Security Deposit	-400.00
<b>Total Monetary Award</b>	<b>\$4050.00</b>

## **Conclusion**

The tenant's application is **dismissed**, without liberty to reapply.

**I grant** an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$4050.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: January 28, 2014

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Residential Tenancy Branch

