



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNDC, MNR & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. . On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on February 21, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides on March 4, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenant moved into the rental unit in January or February 2013. The landlord worked on renovations. On September 28, 2013 the tenant and co-tenant and the

landlord entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2013 and end 3 months later on February 28, 2014 and the tenant would have to vacate at that time. The rent was set at \$800. The tenants did not pay a security deposit.

The landlord testified that he has received rent payments of \$400 for January and February from the other co-tenant. However, the respondent has failed to pay the rent for that period of time. Neither tenant has paid rent for March. In addition the respondent has failed to pay gas and hydro and the respondent's share is \$241 (which includes the gas until the end of February and hydro to January 21, 2014).

The tenant denies the testimony of the landlord. He testified that he has made the rent payments including the rent for March and the hydro and gas payments. He also submits the landlord owes him for work done on the rental unit.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)"

I do not accept the testimony of the respondent and find that his evidence is not credible. I found his testimony to be evasive and not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Further, the tenant was not able to provide precise evidence as to when and where he paid the rent. There was no corroborating evidence. The tenant failed to call other witnesses who could have

seen these payments. It is not logical that a tenant would continue to make payments in the form of cash where a landlord is not providing a receipt. The tenant was evasive about receiving the Notices and the contents of the tenancy agreement although he submitted these documents into evidence.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. I determined there is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Secondly, the tenant signed a fixed term tenancy agreement that provided that the tenancy would end on February 28, 2014 and that the tenant must vacate at that time. I do not accept the testimony of the tenant that he has paid rent and the landlord has accepted the payment thereby reinstating the tenancy. **Accordingly, I granted the landlord an Order for Possession on two days notice.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of January and February and he owes the sum of \$800 remains outstanding. I dismissed the landlord's claim for non-payment of rent for March with liberty to re-apply. The landlord should be bringing this claim against both of the tenants. Further, the landlord asked for an Order for Possession as quickly as possible and it is possible he loss of rent for March may be limited. In addition I determined the landlord has established a claim against this tenant in the sum of \$241 for unpaid utility bills including the gas until the end of February and hydro to January 21, 2014). In summary I ordered that the tenant pay to the landlord

the sum of \$1041. **I granted the landlord a monetary order in the sum of \$1041 plus the sum of \$50 in respect of the filing fee for a total of \$1091.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: March 19, 2014

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Residential Tenancy Branch

