



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WHEELER CHEAM REALTY, ROYAL LEPAGE  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNR, CNC OPR, MNR, MNSD, FF

### **Introduction**

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

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on February 02, 2015 for Orders as follows:

1. To cancel a 10 Day Notice to End for unpaid rent dated January 27, 2015 - Section 46
2. To cancel a 1 Month notice to End for Cause dated January 27, 2015 - Section 47

The landlord filed pursuant to the Act on February 10, 2015 for Orders as follows:

1. An Order of Possession for unpaid rent - Section 55
2. An Order of Possession for Cause – Section 55
3. A Monetary Order for unpaid rent - Section 67
4. A Monetary Order for loss under the Act – Section 67
5. An Order to retain the security deposit - Section 38
6. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and testimony. Both parties acknowledged receiving the application and evidence of the other. The tenant advised they are still residing in the rental unit and have determined to vacate at the end of February 2015; which, as a result the tenant

testified they were no longer opposing the landlord's application(s) for an Order of Possession.

### Other matters

The tenant requested that the Decision of this matter be faxed to them: to a local pharmacy, at which an acquaintance is employed and purportedly agreed to receive the fax. On reflection of this request I decline to fax the Decision in the manner requested as I am not satisfied the tenant's personal information will be protected. The Decision will be mailed to the tenant and they were advised to request a copy at Service BC.

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

Should the Notice(s) to End Tenancy be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

### **Background and Evidence**

The evidence of this matter is that the tenancy began in April 2012. I have benefit of the tenancy agreement. Rent in the amount of \$900.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00 and a pet damage deposit of \$300.00 which they retain in trust. The landlord claims tenant failed to pay rent in the month of January 2015 and on January 27, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent – the Notice included an additional \$25.00 which is not rent. None the less, the tenant claims they paid the rent by placing \$900.00 cash in an envelope, giving it to a friend whom dropped it off at the landlord's realty office, but did not request a receipt because the tenant did not instruct the friend to obtain a receipt. The landlord categorically denied the tenant's account respecting the rent. The tenant testified that as a result of not having a receipt they have no evidence they paid the rent. The tenant did not name the friend whom couriered the cash payment and said they did not ask them to attend the hearing to support the tenant's claims, nor to

provide a statement. The parties agreed that the tenant failed to pay rent in the month of February 2015.

### **Analysis**

Based on the evidence provided by both parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid in form. I find it was available to the tenant to support their claim of how they paid the rent. Specifically, I find the tenant could have provided the “friend”, whom the tenant claims actually submitted the rent of \$900.00 cash, as a witness to support the tenant’s assertion they paid the rent, but they did not. I find that it was further available to the tenant to provide a signed or notarized account from the “friend” in support of the tenant’s claims, but they did not. As a result, I find the tenant’s account of paying the rent, on its own and unsupported, lacks sufficient credibility and I assign insignificant evidentiary weight to it. I find the remaining evidence is that the tenant has not paid the outstanding rent and despite their application to dispute the landlord’s Notice to End for Unpaid Rent has not provided evidence they paid the rent for January and February 2015. Based on the above finding the landlord is entitled to an Order of Possession and the tenancy will end in accordance with my Order. Having determined the tenancy will end resulting from the 10 day Notice to End for Unpaid Rent it is not necessary to determine the merits of the landlord’s 1 Month Notice to End for Cause.

I find that the landlord has established a monetary claim for unpaid rent. I further find the landlord is late fees totalling \$50.00 in accordance with the tenancy agreement respecting late fees. The landlord is also entitled to recovery of the filing fee. The tenant’s deposits will be off-set from the monetary award made herein.

#### *Calculation for Monetary Order*

Unpaid rent for January and February 2015	1800.00
Late fee X 2	50.00
Filing Fees for the cost of this application	50.00
<i>Less security and pet damage deposits – total</i>	<i>-750.00</i>
<b>Total Monetary Award</b>	<b>\$1150.00</b>

**Conclusion**

**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 retains the security and pet damage deposits of \$750.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1150.00**. 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: February 24, 2015

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Residential Tenancy Branch

