



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I required additional information regarding service of the Ten Day Notice to End Tenancy. The participatory hearing was scheduled to consider the Landlord's application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that on February 13, 2015 he posted my interim decision and the Notice of Hearing on the door of the rental unit. The Tenant stated that the rental unit was vacated on February 13, 2015 and these documents were not received.

The Landlord stated that on February 16, 2015 he delivered my interim decision and the Notice of Hearing to the Tenant's place of employment. The Tenant stated that she received these documents from her employer on February 18, 2015. I find that these documents were sufficiently served to the Tenant on February 18, 2015, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Landlord stated that on January 26, 2015 he personally gave each Respondent a copy of the Notice of Direct Proceeding and supporting documents. The Tenant stated that these documents were handed to the male Respondent, who provided her with a copy shortly thereafter. I find that these documents were sufficiently served to each Respondent on January 26, 2015 pursuant to section 71(2)(c) of the *Act*.

The Tenant submitted no evidence in regards to this matter.

Both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to include a claim for unpaid rent from February of 2015.

### Issue(s) to be Decided

Is the Landlord is entitled to a monetary Order for unpaid rent, pursuant to section 67 of the *Residential Tenancy Act (Act)*?

### Background and Evidence

The Landlord and the Tenant agree that that this tenancy began on June 15, 2014 and that the Tenant is required to pay monthly rent of \$1,200.00 by the first day of each month.

The Tenant stated that the rental unit was vacated on February 13, 2015. The Landlord stated that he learned the rental unit had been vacated on February 16, 2015.

In the Proof of Service of the Notice to End Tenancy the Landlord declared that on January 12, 2015 he personally served both Tenants with the Ten Day Notice to End Tenancy. This Proof of Service was signed by a witness who appears to declare that he observed the Landlord serve the Notice to the male Tenant.

At the hearing the Landlord stated that on January 16, 2015 he personally served a male with a Ten Day Notice to End Tenancy for Unpaid Rent. He stated that the male is not a Respondent in this matter; that he does not know the male's name; and that the male is an adult who lives in the rental unit. The Tenant stated that the Notice was served to her roommate and she found it in the rental unit a few days after it was served to her roommate.

The Ten Day Notice to End Tenancy declared that the Tenant must vacate the rental unit by January 22, 2015. The Notice declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that no rent has been paid for January or February of 2015. The Tenant stated that on January 09, 2015 the Tenant paid \$600.00 in rent for January to the Landlord's brother, in cash.

The Landlord and the Tenant agree that rent was typically paid in cash and that, on occasion, it was paid to the Landlord's brother. The Landlord stated that a rent receipt was provided to the Tenant for a cash payment whenever it was requested but that a receipt was not provided if it was not requested. He stated that some rent receipts were provided. The Tenant stated that rent receipts were never provided.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,200.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$600.00 of the \$1,200.00 in rent that was due for January of 2015. I therefore find that the Tenant must pay \$600.00 to the Landlord.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation. In regards to the claim for unpaid rent, the burden of proving that rent was not paid in cash, as claimed by the Tenant, rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt whenever rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has not always been provided with a receipt, there can be no reasonable expectation that the tenant will provide a receipt for every cash payment that has been made. In these circumstances the Landlord's failure to provide receipts for every cash payment made during this tenancy significantly impairs the Landlord's ability to prove that the Tenant did not pay \$600.00 in rent on January 09, 2015. On this basis, I dismiss the Landlord's claim for the remaining \$600.00 in rent for January of 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was served in accordance with section 88(e) of the *Act*. I find that the Landlord served this Notice on either January 12, 2015 or January 16, 2015.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5)

of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice, which was ten days after the Notice was served.

As the Tenant did not vacate the rental unit on the effective date of the Notice, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for entire month of January, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for 13 days in February that the Tenant remained in possession of the rental unit, at a daily rate of \$42.86, which equates to \$514.32.

I have not awarded compensation for lost revenue for any period after the rental unit was vacated, as the Landlord has not filed a claim for lost revenue.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,114.32, for unpaid rent and I grant the Landlord a monetary Order for that amount. 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.

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 04, 2015

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Residential Tenancy Branch

