



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that on August 27, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

### Background and Evidence

The Landlord and the Tenant agreed that this tenancy began in 2010. They agreed that during the latter portion of this tenancy that Tenant was required to pay \$575.00 in rent by the first day of each month and \$575.00 in rent by the fifteenth day of each month.

At the hearing the Landlord was asked to provide details of when rent was not paid on time, beginning with the first rent payment that was missed. The Landlord began by discussing overdue rent from January of 2012. He did not state that rent was unpaid in May or June of 2011, although I note that he has submitted a written declaration that rent of \$700.00 is outstanding from May and June of 2011.

The Landlord and the Tenant agree that rent has been paid, in full, for February, March, April, June, August, and December of 2012.

The Landlord stated that on January 04, 2012 the Tenant paid \$550.00 in rent and on January 13, 2012 the Tenant paid \$500.00 in rent, leaving \$100.00 due for that month. The Tenant stated he is not sure how much he paid in rent for that month.

The Landlord stated that on May 10, 2012 the Tenant paid \$550.00 in rent leaving \$600.00 due for that month. The Tenant stated he is not sure how much he paid in rent for that month.

The Landlord stated that on July 18, 2012 the Tenant paid \$575.00 in rent leaving \$575.00 due for that month. The Tenant stated he "thinks" he paid all the rent for that month, although he does not know how or when it was paid.

The Landlord stated that on September 05, 2012 the Tenant paid \$575.00 in rent leaving \$575.00 due for that month. The Tenant stated he does not know how much he paid in rent for this month.

The Landlord stated that on October 10, 2012 the Tenant paid \$1,000.00 in rent leaving \$150.00 due for that month. The Tenant stated he does not know how much he paid in rent for this month.

The Landlord stated that no rent was paid for November of 2012, leaving \$1,150.00 due for that month. The Tenant stated he "thinks" he paid "about \$1,050.00" in rent for this month.

The Landlord and the Tenant agree that the Tenant paid an additional \$350.00 in rent in December of 2012, which was applied to the arrears from 2012.

The Landlord and the Tenant agree that rent has been paid, in full, for April, July, October, November, and December of 2013.

The Landlord stated that on January 07, 2013 the Tenant paid \$500.00 in rent for January of 2013. The Tenant stated that he "believes" he also paid \$650.00 in cash sometime around the middle of January.

During the hearing the Landlord and the Tenant agree that \$550.00 in rent was paid on February 04, 2013 and \$550.00 was paid on February 18, 2013, leaving \$50.00 due for that month. In his written submission the Landlord has incorrectly calculated that \$100.00 is still due for this month.

The Landlord stated that on March 01, 2013 the Tenant paid \$550.00 in rent for March of 2013. The Tenant stated that he "believes" he also paid \$650.00 in cash sometime around the middle of March.

The Landlord and the Tenant agree that the Tenant paid an additional \$450.00 in rent in April of 2013, which was applied to the arrears.

The Landlord stated that on May 01, 2013 the Tenant paid \$575.00 in rent for May of 2013. The Tenant stated that he "believes" he also paid \$575.00 in cash in May later in the month.

The Landlord and the Tenant agree that \$1,000.00 in rent was paid for June of 2013, leaving \$150.00 due for that month.

The Landlord and the Tenant agree that the Tenant paid an additional \$300.00 in rent in July of 2013, which was applied to the arrears.

During the hearing the Landlord and the Tenant agreed that no rent was paid for August of 2013, leaving \$1,150.00 due for that month. This is inconsistent with the written submission of the Landlord, in which the Landlord declared that payments of \$403.20 and \$150.00 were paid on August 09, 2013, although neither of these payments appear on the bank statements submitted in evidence by the Landlord.

The Landlord and the Tenant agree that \$900.00 in rent was paid for September of 2013, leaving \$250.00 due for that month.

The Landlord and the Tenant agree that the Tenant paid an additional \$250.00 in rent in October of 2013, which was applied to the arrears.

The Landlord and the Tenant agree that the Tenant paid an additional \$250.00 in rent in November of 2013, which was applied to the arrears.

The Landlord and the Tenant agree that the Tenant paid an additional \$50.00 in rent in December of 2013, which was applied to the arrears.

The Landlord and the Tenant agree that \$1,100.00 in rent was paid for January of 2014, leaving \$50.00 due for that month.

The Landlord and the Tenant agree that he frequently paid his rent by electronic bank transfer. All of the aforementioned payments reported by the Landlord are consistent with the bank statements submitted in evidence by the Landlord.

The Landlord stated that early in the tenancy the Tenant made one or two payments in cash and that he was always provided with a receipt when a payment was made in cash. He stated that there were no cash payments made in 2012, 2013, or 2014. The Tenant stated that he has never received a receipt for any payments made in cash.

The Tenant stated that he gave the Landlord verbal notice of his intent to end the tenancy on, or about, January 01, 2014. The Landlord stated that the Tenant gave verbal notice of his intent to end the tenancy sometime near the end of January of 2014. The parties agree that no written notice was given.

The Tenant stated that he thinks he vacated the rental unit on January 28, 2014 and the Landlord stated that he thinks it was vacated on February 01, 2014. The parties agree the Tenant did not pay rent for February of 2014

The Landlord is seeking lost revenue from February of 2014, in the amount of \$575.00. He stated that he began advertising the rental unit on several popular websites shortly after receiving verbal notice of the Tenant's intent to vacate and that he was able to find a new Tenant for February 15, 2014.

### 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 \$575.00 by the first day of each month and \$575.00 by the fifteenth day of each month. Section 26(1) of the Act requires tenants to pay rent when it is due.

As the Landlord did not raise the issue of unpaid rent from 2011 and the Tenant did not have the opportunity to respond to a claim for unpaid rent from 2011, I decline to award compensation for unpaid rent from 2011. Although the Landlord does declare in his written submission that there is outstanding rent of \$700.00 from 2011, I find that he had an obligation to raise this claim at the hearing so the Tenant could respond to the claim.

On the basis of the testimony of the Landlord and the bank statements submitted in evidence, I find that the Tenant still owes rent of \$100.00 for January of 2012. In making this determination I note that the Tenant did not recall how much rent he had paid for this month and I therefore find it reasonable to rely solely on the records and testimony of the Landlord.

On the basis of the testimony of the Landlord and the bank statements submitted in evidence, I find that the Tenant still owes rent of \$600.00 for May of 2012. In making this determination I note that the Tenant did not recall how much rent he had paid for this month and I therefore find it reasonable to rely solely on the records and testimony of the Landlord.

I favour the testimony of the Landlord, who stated that only \$575.00 in rent was paid for July of 2012 over the testimony of the Tenant, who stated that he "thinks" all the rent was paid for that month. I therefore find that the Tenant still owes \$575.00 in rent for this month.

On the basis of the testimony of the Landlord and the bank statements submitted in evidence, I find that the Tenant still owes rent of \$575.00 for September of 2012. In making this determination I note that the Tenant did not recall how much rent he had paid for this month and I therefore find it reasonable to rely solely on the records and testimony of the Landlord.

On the basis of the testimony of the Landlord and the bank statements submitted in evidence, I find that the Tenant still owes rent for of \$150.00 for October of 2012. In making this determination I note that the Tenant did not recall how much rent he had paid for these months and I therefore find it reasonable to rely solely on the records and testimony of the Landlord.

I favour the testimony of the Landlord, who stated that no rent was paid for November of 2012 over the testimony of the Tenant, who stated that he "thinks" he paid "about \$1,050.00, in rent for that month. I therefore find that the Tenant still owes \$1,150.00 in rent for this month.

I favour the testimony of the Landlord, who stated that only \$500.00 in rent was paid for January of 2013 over the testimony of the Tenant who stated that he "believes" he also paid \$650.00 in cash for this month sometime in the middle of the month. I therefore find that the Tenant still owes \$650.00 in rent for this month.

On the basis of the undisputed testimony, I find that the Tenant still owes rent of \$50.00 for February of 2013.

I favour the testimony of the Landlord, who stated that only \$550.00 in rent was paid for March of 2013 over the testimony of the Tenant who stated that he "believes" he also paid \$650.00 in cash for this month sometime in the middle of the month. I therefore find that the Tenant still owes \$600.00 in rent for this month.

I favour the testimony of the Landlord, who stated that only \$575.00 in rent was paid for May of 2013 over the testimony of the Tenant who stated that he "believes" he also paid \$575.00 in cash for this month sometime later in the month. I therefore find that the Tenant still owes \$575.00 in rent for this month.

On the basis of the undisputed evidence, I find that the Tenant still owes rent of \$150.00 for June of 2013.

I find that the Landlord has submitted insufficient evidence to establish that no rent was paid for August of 2013. Although the Landlord stated during the hearing that no rent was paid for August of 2013, the Landlord's written declaration is that \$553.20 was paid on August 09, 2013, leaving a balance due of \$596.80. Given that people can become confused discussing numbers during a hearing, I find that the Landlord's written declaration is more reliable.

Although the Tenant also agreed during the hearing that no rent was paid for August of 2013, I am not convinced that the Tenant truly knows the amount of rent he has paid. All of the Tenant's testimony was based on memory and he appeared to give little thought to the answers he provided regarding how much rent he had paid for any given month.

For these reasons, I conclude that \$553.20 was paid for rent for August of 2013, leaving a balance due of \$596.80.

On the basis of the undisputed evidence, I find that the Tenant still owes rent of \$250.00 for September of 2013.

On the basis of the undisputed evidence, I find that the Tenant still owes in rent for the month of January of 2014, in the amount of \$50.00.

I favoured the testimony of the Landlord over the testimony of the Tenant regarding rent for January, March, and May of 2013, in part, because the Landlord's testimony was detailed and was corroborated by bank records. Conversely, none of the Tenant's testimony was based on written records. His testimony regarding all of his payments were based on memory; he submitted no receipts for payments he allegedly made in cash; he was not even certain how much he paid for those months; and he spent little time contemplating each of his answers.

In determining this matter I have placed little weight on the Tenant's testimony that he never received a receipt for rent paid in cash. In reaching this conclusion I was influenced by the absence of evidence that corroborates this testimony or that refutes the Landlord's testimony that rent was not paid in cash during 2012 or 2013 and that a receipt was always provided when rent was paid in cash.

The Landlord and the Tenant agree that in December of 2012, April of 2013, July of 2013, October of 2013, November of 2013, and December of 2013 the Tenant paid \$1,650.00 towards the rent arrears. I therefore find that this should be applied to the arrears.

I note there is a difference between my calculations and the calculations of the Landlord, which I believe is due to an error in the Landlord's calculation of rent due for February of 2013. The Landlord concluded that rent was in arrears by \$4,750.00 on February 08, 2013 but it appears he did not reduce the arrears by the \$550.00 that was paid on February 18, 2013, which would have left a balance of \$4,200.00 owing on February 18, 2013 (including the amount allegedly owing from 2011).

I find that the Tenant did not comply with the *Act* when he did not provide the Landlord with written notice of his intent to vacate in a manner that complies with section 45 of the *Act*. I find that the lack of proper written notice resulted in the Landlord losing revenue for the period between February 01, 2013 and February 14, 2014, as the nature of the notice prevented the Landlord from advertising the rental unit in a timely manner. I therefore find that the Landlord is entitled to compensation for loss of for the first two weeks of February, in the amount of \$575.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$5,096.80, which is comprised of \$4,421.80 in unpaid rent for the period January 01, 2012 and January 31, 2014, \$575.00 in lost revenue, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$5,096.80. 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 24, 2015

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Residential Tenancy Branch

