



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issues to be Decided

Should the notice to end tenancy be set aside?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

### Background and Evidence

The parties agreed that the tenancy began on or about October 15, 2014, that the tenant paid a \$500.00 security deposit at the outset of the tenancy and that monthly rent was set at \$1,000.00 per month. They further agreed that the tenant failed to pay rent in the months of February – May inclusive. The landlord claimed that the tenant paid just \$500.00 in the month of December 2014 and paid no rent whatsoever in January 2015. The tenant claimed that he paid all of his rent in December and paid just half of his rent in January.

The landlord provided evidence that she served the tenant with a notice to end tenancy on January 9 on which it stated that \$1,500.00 in rent was due. The parties agreed that on April 2, the landlord served the tenant with a second 10 day notice to end tenancy for unpaid rent (the “Notice”) which is the notice at issue in this hearing.

### Analysis

I find that the tenant was obligated to pay \$1,000.00 in rent in advance on the first day of each month. Although the tenant claimed that he paid all of his rent in December 2014, the first notice to end tenancy shows otherwise and the tenant provided no evidence such as a payment receipt to prove his claim that the rent was fully paid for that month. I find that the tenant failed to pay \$500.00 of his rent in December and paid no rent whatsoever for the months of January – May inclusive. I find that the tenant received the Notice on April 2, 2015 and that the landlord has grounds to end the tenancy. I therefore dismiss the tenant's claim.

Based on the above facts I find that the landlord is entitled to an order of possession. At the hearing, the landlord stated that she was willing to permit the tenant to stay in the rental unit until June 1 and asked for an order of possession effective on that date. I find this date to be reasonable and I grant the order. The tenant must be served with the 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.

As for the monetary order, I find that the landlord is entitled to recover the unpaid rent for the partial month of December and the full months of January – May inclusive as well as the \$100.00 filing fee paid to bring this application for a total entitlement of \$5,600.00. I order that the landlord retain the \$500.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,100.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The landlord's claim for the cost of hiring process servers is dismissed as the tenant should not be responsible for the landlord having chosen a costly means of service.

I note that at the hearing, the landlord indicated that if the tenant pays all of the rental arrears, she may consider extending the tenancy until June 15. The landlord is under no obligation to extend the tenancy if the tenant pays part or all of the arrears and should clearly indicate on the receipt issued to the tenant whether the payment is accepted for the purpose of reinstating the tenancy or for use and occupancy only and should indicate the date on which the landlord expects the tenant to vacate the unit. If the landlord accepts payment for use and occupancy only, the tenancy will end on the date specified by the landlord and the order of possession will be enforceable after that date.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession and a monetary order for \$5,100.00. The landlord will retain the security deposit.

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: May 25, 2015

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Residential Tenancy Branch

