



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant originally applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") however that application was deemed abandoned when the dispute resolution package created by the Residential Tenancy Branch ("RTB") for service to the landlord was not picked up by the tenant/applicant.

The landlord testified that he served the 10 Day Notice to the tenant on April 24, 2015. The landlord testified that he served the tenant with his Application for Dispute Resolution by registered mail on May 11, 2015. A Canada Post tracking number was provided by the landlord. The tenant confirmed receipt of both the 10 Day Notice and the landlord's dispute resolution package. I accept that the landlord's testimony and supporting evidence that the tenant was sufficiently served with both the notice and the package for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on April 1, 2014 as a month to month tenancy. The rental amount of \$1000.00 was payable on the first of each month. Both parties agreed that no security deposit

was provided by the tenant to the landlord. The tenant continues to reside in the rental unit. The landlord applied for an Order of Possession and a monetary order both for unpaid rent.

The landlord provided evidence with respect to a prior RTB hearing with respect to this tenancy. At a hearing on April 22, 2015, the landlord applied for an Order of Possession for unpaid rent as well as a monetary order. At that same hearing, the tenant applied to cancel the notice to end tenancy issued by the landlord. The arbitrator cancelled the notice to end tenancy dated March 10, 2015 stating,

*...given that the Landlord has the burden of proof, did not provide any evidence of an accounting system for the collection and payment of rent, has articulated several other reasons for wanting to end the tenancy and did not dispute the failure to provide a rent receipt for a previous cash payment, I tend to prefer the Tenant's evidence and therefore find that the Landlord has failed to provide sufficient evidence to establish on a balance of probabilities that the Tenant failed to pay March 2015 rent. As a result I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. I caution the Tenant to pay April 2015 rent forthwith. As the Notice is not valid I find that the Landlord is not entitled to an order of possession and I dismiss the Landlord's claim for an order of possession and a monetary order in relation to March 2015 rent. The Landlord has leave to reapply in relation to the payment of April 2015 rent.*

The landlord testified that the tenant did not pay rent of \$1000.00 due on April 1, 2015 despite the cautions provided to the tenant by the previous arbitrator. Despite the cautions of the arbitrator in the previous hearing, the landlord presented very little evidence beyond his testimony that the tenant had not paid his April 2015 rent. However, the tenant testified that he paid both April 2015 and May 2015 rent on May 3, 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the April 2015 rent at all after receiving the 10 Day Notice on April 24, 2015. The tenant testified that he paid rent for both April and May 2015, totalling \$2000.00. The tenant testified that he paid his outstanding rental amounts in cash but that he did not get a receipt. He was given an opportunity to adjourn the hearing so that he could have an opportunity to produce records of withdrawing the funds to pay the landlord. The tenant declined to take that opportunity.

The landlord is also seeking a monetary award of \$1000.00 for the unpaid rental amount for the month of April 2015 and recovery of his \$50.00 filing fee for this application.

### Analysis

I find that neither party took instruction from the previous arbitrator in the April 22, 2015. The landlord has provided the minimum of evidence with respect to the non-payment of rent by the tenant. However, the landlord properly issued a 10 Day Notice to End Tenancy. Pursuant to section 47 of the *Act*,

- 47 (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

The tenant did not complete the application process to dispute the notice to end tenancy. The tenant provided testimony, disputed by the landlord, that he paid the overdue rent one day prior to the effective date of the 10 Day Notice. However, under section 47 of that *Act*, a tenant must take action to dispute a notice to end tenancy or pay outstanding rental amounts within **5 days** of the issuance of the notice. I also note that the tenant did not provide any evidence to support his claim that he had paid his rent. I find that a reasonable person faced with an end to their tenancy for the second time in two months would likely attempt to supply proof that they had indeed paid their rent.

I find that the presumption at section 47(5) of the *Act* applies in this matter. The tenant failed to pay the April 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 1, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I decline to accept the testimony of the tenant with regards to any payment of rent for April 2015 or May 2015. I accept that landlord's testimony that the rent for both April and May remains unpaid. The landlord sought a monetary order including unpaid rent for February 2015 as well. However, I find that he has not met the burden of proof to support his application with respect to February 2015. The landlord had supplied a copy of the previous RTB decision and I note that unpaid February rent was not raised at that time. The 10 Day Notice submitted by the landlord dated April 24, 2015 does not reference unpaid rent in February 2015.

Based on all of the evidence, I find the landlord entitled to a monetary order that includes \$2000.00 in rental arrears for April and May 2015 as well as \$50.00 to recover the cost of his filing fee.

### Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$2050.00.

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: June 11, 2015

---

Residential Tenancy Branch

