



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord: MNR, OPR, MNSD, MNDC, FF  
Tenant: CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the Act).

**The tenant** filed their application July 03, 2015 for an Order to:

1. Cancel a 10 Day Notice to End Tenancy for Unpaid – Section 46

**The landlord** filed their application July 10, 2015 for Orders as follows:

1. An Order of Possession for unpaid rent – Section 55
2. A Monetary Order for unpaid rent - Section 67
3. A Monetary order for loss – Section 67
4. To keep all or part of the security deposit – Section 38
5. An Order to recover the filing fee for this application - Section 72

Both parties acknowledged receiving the application of the other. Each attended the hearing and was given opportunity to present all *relevant* evidence and relevant testimony in respect to their claims and to make *relevant* prior submission of evidence to the hearing, provide witnesses, and fully participate in the conference call hearing. Both parties acknowledged that neither had submitted any document evidence other than a copy of the 10 Day Notice to End. The hearing proceeded on the merits of the applications. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

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

Should the landlord's Notice to End for Unpaid Rent be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

## **Background and Evidence**

The *undisputed* testimony in this matter is as follows.

The tenancy began approximately 3 years ago as a verbal tenancy agreement. The landlord currently holds a security deposit of \$350.00 in trust. The landlord resides in the upstairs of the residential property – a house – and has been there 8 years. The tenant resides downstairs in one of two basement suites. On June 30, 2015 the landlord gave the tenant a 10 Day Notice for Unpaid Rent stating that on May 01, 2015 the tenant owed rent in the amount of \$780.00. The Notice has an incorrect effective date – *automatically adjusted by Section 53 of the Act to July 10, 2015*.

The *disputed* testimony is as follows.

The tenant claims he always pays \$800.00 cash in \$100 denominations, for which the landlord has never provided written receipts. The landlord claims the rent is only \$780.00 for which they have provided receipts as of 2 years ago, whenever the rent has been paid. The landlord testified that the tenant has not paid any rent as of May 01, 2015 and currently owes rent to September 2015 in the sum of \$3900.00.

The tenant testified that he has always paid the rent early or on time for the last 3 years – originally to the landlord's daughter, and directly to the landlord in this hearing the last 2 years, "I've been giving her \$800.00 in cash, and I have 2 witnesses". The tenant relies on their witness to corroborate their payment of the rent. They testified the last time they paid the rent was September 01, 2015 – the day before this hearing. They went to the landlord's front door at 11:00 a.m., paid \$800.00 cash consisting of 8 x \$100 denomination directly to the landlord on her front door step. The tenant claims the transfer of cash was witnessed by their roommate MP, a witness in this proceeding. Asked why they don't pay the landlord with a cheque or why they pay more than required the tenant testified they do not have personal cheques and they make \$28.00 per hour and don't mind paying the even \$800.00 amount. The landlord claims the tenant's testimony of them paying rent since May 2015 is false.

The landlord testified that they work 2 jobs. They start at 6:30 a.m. on weekdays and do not return home until early evening - therefore could not be home at 11:00 the previous day as stated by the tenant. Also they would not know if and when the tenant would appear to pay rent as the tenant has not been communicating with her. Her employer approved her absence today knowing she needed to attend the hearing. The landlord testified that if she had anticipated the tenant's testimony regarding the previous day she would have arranged for confirmation by her employer that she was at work.

*Tenant's witness: MP – tenant's room-mate.*

Witness provided affirmed evidence. They testified residing with tenant 3 years, and they have, "seen the tenant always pay the rent in cash in \$100 bills". Witness testified the tenant has always paid the rent in cash every month and no receipts given.

- Q. When did you see the tenant pay rent? A. *(near 5 second pause)* "11:00 o'clock yesterday".  
Q. Where was the rent paid? A. *(near 10 second pause)* "at the front door"  
Q. How was it paid? A. " 8 -\$100 bills. I gave him 4 for my half"  
Q. Whom was the money given to? A. *(near 10 second pause)* "the landlord"  
Q. Where were you when you saw this? A. "bottom of the stairs looking up"  
Q. Do you recall what, if anything was said? A. "Here's the money? I don't know I couldn't hear".  
Q. Do you recall what the landlord was wearing? A. *(near 10 second pause)* "Indian dress?"

The landlord testified they do not know the witness MP and are not aware they live below her; and that if he does, they would likely have come to know of it over the last 3 years, but have not. The landlord further testified they were working and not home yesterday and have not spoken to the tenant in 2 months since giving the Notice to End, as the tenant has menacing dogs and he just utters profanity to her. The witness responded they are not always in the suite nor have made themselves noticeable..

*Tenant's witness: WT – neighbour of second basement suite.*

Witness provided affirmed evidence. The witness testified they, "*saw him (tenant) pay her (landlord) a few months ago. Gave her a handful of cash, "I was in my doorway and saw him paying the rent outside on the walkway".*

## **Analysis**

References to relevant legislation can be accessed from the Residential Tenancy Branch website at [\*\*www.gov.bc.ca/landlordtenant\*\*](http://www.gov.bc.ca/landlordtenant).

It must be noted that each party is responsible to support their claims. I have reviewed and considered all of the evidence in this matter, which other than the Notice, is solely comprised of testimonial evidence. There is vast contrast between the parties with respect to all of the testimony. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows.

The tenant's testimony is simple: they have always paid the rent on time, in cash, and rely on their 2 witnesses to support they have paid all rent owed to date. The landlord's testimony is also simply: the tenant has not paid rent as of May 2015.

I did not form a favourable impression of the testimony of the tenant's witnesses. MP's testimony contained long pauses in their responses - of events less than 24 hours earlier. It gave the impression they were not sure or they were confused, but more so of their testimony being contrived, or them being coached. As a result I found the evidence of MP neither credible nor reliable. WT's testimony was vague and insufficient to be helpful or convincing. As a result I found the evidence of WT unreliable.

I found the tenant's testimony was concise, but moreover, I find their claimed conduct inconsistent with the issue in dispute. I find the tenant's version of events perplexing. The tenant wants me to accept that they continued to pay \$800 cash every month - without receiving proof of payment – and did so on 3 occasions after filing application to dispute the landlord's Notice which alleged they were not paying rent. Given the nature of the dispute, the tenant continued to rely solely on their witness to prove their version of events. If wanting to appear credible, I find it improbable a reasonable person would follow the same course as the tenant – rather than relying on an assured payment method such as a money order, bank draft or certified cheque to prove paying the rent. I also find that with their credibility at stake, it was available to the tenant, or their witness, to somehow record the claimed cash transactions, but did not. Under the circumstances I find the tenant's evidence did not make sense and that their version of events is neither probable nor credible.

Effectively I found the landlord's testimony was matter of fact, unembellished and made sense. I therefore prefer the evidence of the landlord over that of the tenant wherever there is a conflict. On balance of probabilities, I find that the rent for May through to September 2015 in the claimed sum of \$3900.00 has not been paid. I therefore uphold the landlord's Notice to End for Unpaid Rent and **I dismiss** the tenant's application, with the result that the landlord has established entitlement to an **Order of Possession** and a **Monetary Order** for the unpaid rent.

As the landlord was successful in their application they are further entitled to recover their filing fee of \$50.00. The security deposit will be off-set from the award made herein.

***Calculation for Monetary Order***

Rental Arrears	\$3900.00
Filing Fee for the cost of this application	50.00
<i>Minus Security Deposit to landlord</i>	<i>-350.00</i>
<b>total monetary award to landlord</b>	<b>\$3600.00</b>

## **Conclusion**

The tenant's application is **dismissed**.

**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 may retain the security **deposit** of \$350.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$3600.00**. 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: September 08, 2015

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Residential Tenancy Branch