



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VILLA ADRIA APT.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR, CNR, MNR, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to an order of possession and to a monetary order for unpaid rent and the filing fee?

### **Background and Evidence**

The tenancy started on February 01, 2015. The rent is \$920.00 per month due on the first day of each month. The tenant testified that the Province of BC pays \$570.00 towards her rent, directly to the landlord. The landlord agreed that he received this portion of the tenant's rent by direct deposit into his bank account.

The tenant testified that effective October 2015, she enrolled in a program that provides youth with housing support and a rental supplement. The tenant filed a copy of a letter from the program organiser that confirmed that monthly payments of \$350.00 will be made towards the tenant's rent by direct deposit into the landlord's account.

The landlord provided his bank account information to the program and stated that rent for November and December in the total amount of \$700.00 was not deposited into his bank account, by the Youth Program that the tenant was enrolled in.

On December 06, 2015, the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant disputed the notice in a timely manner as she believed that the Youth Program had paid rent by direct deposit to the landlord's bank account.

The tenant was emphatic in her testimony that she did not owe any rent. She filed copies of 3 cashed cheques from the program in the amount of \$350.00 each. The evidence was sent by fax and was very unclear. However with the help of a magnifying glass I was able to read that these cheques were issued to a person other than the landlord and whose initials are YW. A note one of the cheques states "*All three cheques to YW for October, November and December rent subsidies have been cashed (cleared our bank)*". Upon further scrutiny of these cheques, I find that I was able to read on one of them "October rent subsidy for (Tenant's name) – (dispute rental unit#)".

At my request, the tenant provided rental information on documents that were clear and easy to read.

### **Analysis**

Based on the testimony of both parties and on the evidence filed by the tenant, I find that rent for the tenant was paid by two organisations – the Province of BC (\$570.00) and the Youth Program that the tenant was enrolled in (\$350.00).

There are no issues with the portion of rent paid by the Province of BC. However the subsidy paid by the Youth Program was issued in the correct amounts to YW, a person who is not the landlord. When the landlord did not receive the portion paid by the Youth Program for the months of November and December, he issued a notice to end tenancy.

It is the tenant's responsibility to ensure that rent is paid as per the terms of the tenancy agreement. The tenant received copies of the cashed cheques and should have followed up with the Youth Program regarding the name of the payee, when the landlord put her on notice that rent had not been received by him.

The tenant received the notice to end tenancy for unpaid rent, on December 06, 2015 and did not pay rent within five days of receiving the notice to end tenancy pursuant to section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) the landlord is entitled to an order of possession.

However in this case, I find that the rent was paid by the Youth Program on the tenant's behalf but was paid to YW who is someone other than the landlord. Accordingly, I allowed the tenant time to remedy the situation and provide additional information regarding the rent payments made by the Youth Program on her behalf. The tenant contacted the Youth Program and they faxed to the Residential Tenancy Branch, the form that the landlord had filled out regarding his bank information for the purpose of direct deposit into the landlord's account.

This document is signed by the landlord and instructs the Youth Program to deposit the rent cheques into the account of the owner of the property that houses the rental unit. The property owner is YW. The Youth Program also faxed in the same copies of cashed cheques that the tenant had filed into evidence that show that rent for October, November and December 2015 was paid to YW on behalf of the tenant, for rent of the dispute rental unit.

Accordingly, I find that the landlord was paid rent and that the tenant does not owe rent. It is interesting to note that the rent cheques for October 2015 and January 2016 were also made out to YW and as per the landlord's testimony were received by him. The notice to end tenancy is set aside. The landlord has not proven his case and must bear the cost of filing his own application.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement.

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: January 28, 2016

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Residential Tenancy Branch

