



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 19, 2015 he personally served the Application for Dispute Resolution and the Notice of Hearing to the Tenant named in this decision. The Tenant acknowledged receipt of these documents.

The parties represented at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Preliminary Matter #1

The Landlord applied to amend the Application for Dispute Resolution to reflect the spelling of the name of the Tenant named in this decision. The Tenant stated that the name provided by her at the hearing is her legal name. With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of her name as she provided it at the hearing.

### Preliminary Matter #2

The Landlord stated that he did not serve the Application for Dispute Resolution and the Notice of Hearing to either of the other two Respondents named in his Application for Dispute Resolution. The Landlord applied to amend the Application for Dispute Resolution to remove the other two Respondents from the Application for Dispute Resolution.

As the other two Respondents have not been served with the Application for Dispute Resolution, I grant the request to amend the Application by deleting these two

Respondents. This decision and Order reflect only the name of the single remaining Respondent.

### Preliminary Matter #3

The Landlord submitted two Ten Day Notices to End Tenancy, dated October 26, 2015 to the Residential Tenancy Branch on November 19, 2015. The Landlord stated that this evidence was served to the Tenant on November 19, 2015 with the Application for Dispute Resolution. The Tenant stated that these documents were not served to her at any time.

I find there is insufficient evidence to determine whether these documents were actually served to the Tenant as evidence for these proceedings and there were not, therefore, accepted as evidence for these proceedings.

Typically in circumstances where there is uncertainty regarding service of documents, I simply adjourn the hearing to allow the documents to be re-served. I did not adjourn the hearing in these circumstances as I am satisfied I can adjudicate this matter without viewing those documents.

### Preliminary Matter #4

The Landlord and the Tenant agree that the Landlord was granted an Order of Possession which is dated December 31, 2015. This Order required the Tenant to vacate the rental unit no later than two days after it is served upon the Tenant.

The Tenant provided one of the file numbers for the hearing that relates to the Order of Possession. I have recorded the related file numbers on the first page of this decision. I reviewed that decision prior to rendering a decision in this matter to ensure the principle of Res Judicata does not apply.

At the hearing the Landlord withdrew his application for an Order of Possession, as he does not require a second Order of Possession.

### Preliminary Matter #5

The Landlord stated that the Respondent with the initials "T.B" paid a security deposit of \$225.00, which he returned to him on October 15, 2015. The Landlord stated that this was the only security deposit paid for the rental unit.

The Landlord stated that he was not holding a security deposit when he filed this Application for Dispute Resolution and that he mistakenly applied to retain the security deposit. He stated that he wishes to withdraw his application to retain the security deposit. I consider the Landlord's application to retain the security deposit to be withdrawn.

The Tenant stated that she paid a security deposit of \$300.00 on November 20, 2013, which the Landlord denies. The Tenant has the right to file an Application for Dispute Resolution seeking the return of any security deposit paid, however that matter will not be considered at these proceedings.

#### Preliminary Matter #6

The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from December of 2015 and January of 2016. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

#### Issue(s) to be Decided

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

#### Background and Evidence

The Landlord stated that:

- this tenancy began on January 01, 2014;
- the three original Respondents were jointly required to pay monthly rent of \$1,350.00 by the first day of each month;
- at the start of the tenancy the Province of British Columbia paid \$450.00 directly to the Landlord for each of the three original Respondents;
- sometime after the tenancy began the female Respondent began paying \$450.00 to the Landlord directly;
- he has a tenancy agreement that names the Tenant and the original Respondent with the initials "T.B.";
- he has a tenancy agreement that is signed by the Tenant, although he did not submit it in evidence because he cannot locate it; and
- the Tenant is still living in the rental unit.

The Tenant stated that:

- this tenancy began in September of 2013;
- the three Respondents were individually required to pay monthly rent of \$450.00 by the first day of each month;
- at the start of the tenancy the Province of British Columbia paid \$450.00 directly to the Landlord on her behalf;
- sometime after the tenancy began she began paying \$450.00 to the Landlord directly;
- she has a tenancy agreement that names all three original Respondents, however it is only signed by the Landlord;
- she did not sign a tenancy agreement; and

- she is still living in the rental unit.

The Landlord and the Tenant agree that all of rent has been paid for the period ending on August 31, 2015.

The Landlord stated the Tenant and one of the other original Respondents each paid rent of \$450.00 in rent for September of 2015. The Tenant stated that she paid her rent for September of 2015.

The Landlord stated the Tenant paid \$300.00 in rent for October of 2015. The Tenant stated that she paid \$450.00 in rent for October of 2015, in cash. The parties agree that the Landlord issued a receipt for this rent payment, although neither party submitted it in evidence.

The Landlord stated the Tenant paid no rent for November of 2015. The Tenant stated that she paid \$350.00 in rent for November of 2015, in cash. The Tenant stated that she received a receipt for this payment which she did not submit in evidence.

The Landlord and the Tenant agree that no rent was paid for December and January of 2015.

The Landlord stated that on October 26, 2015 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 06, 2015.

The Tenant stated that she was not served with the aforementioned Notice to End Tenancy and she has never seen a copy of it.

The Witness for the Landlord stated that he was present sometime in October or November of 2015 when the Landlord served a Notice to End Tenancy to a male and a female at the front door of the rental unit. He stated that he does not know which of the two people physically accepted the document from the Landlord and he does not know the name of the female who was present when the Notice was served.

The Tenant stated that sometime in October of 2015 she told the Landlord the hot water tank was broken; that the Landlord did not repair the hot water tank; that she eventually paid \$150.00 to repair the hot water tank; and that she did not provide the Landlord with a receipt for the repair.

The Landlord stated that he was informed of a problem with the hot water tank in October of 2015 and that he paid a plumber to rectify the problem.

## Analysis

On the basis of the testimony of the Tenant I find that she has an oral tenancy agreement with the Landlord that required her to pay monthly rent of \$450.00 by the first day of each month.

I find that the Landlord has submitted insufficient evidence to establish that all three Respondents were co-tenants that were jointly responsible for paying monthly rent of \$1,350.00. In reaching this conclusion I was heavily influenced by the fact a tenancy agreement was not submitted in evidence by either party which might support the Landlord's submission. I was also influenced by the Tenant's testimony that each Respondent was individually responsible for paying their portion of the rent.

On the basis of the testimony of the Landlord, I find that the Tenant has paid at least \$300.00 in rent for October of 2015. I find that the Tenant has submitted insufficient evidence to establish that she paid more than \$300.00 in rent for October and I therefore find that she still owes the Landlord \$150.00 in rent for this month.

I find that the Tenant has submitted insufficient evidence to establish that she paid any rent for November of 2015 and I therefore find that she still owes the Landlord \$450.00 in rent for this month.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. The undisputed evidence is that the Landlord provided the Tenant with a receipt for the cash payment that was made in October of 2015. In the absence of a copy of the receipt issued for October's rent and the receipt allegedly issued for November's rent, I am unable to conclude that the Tenant paid more than \$300.00 in rent for October of 2015 or that she paid any rent for November of 2015.

As the decision of December 31, 2015 was raised during this hearing, the file number of which is recorded on the first page of this decision, I find that I am compelled to consider the facts of those proceedings. In particular, I must consider that the Landlord declared in those proceedings that he had served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on September 23, 2015. It is apparent that the Landlord was granted an Order of Possession on the strength of this Two Month Notice to End Tenancy.

Section 51(1) of the *Act* stipulates that a tenant who receives a Two Month Notice to End Tenancy for Landlord's Use of Property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As there is no dispute that the Tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, I find that she is entitled to the one month's free rent. I therefore find that she is not obligated to pay any rent for December of 2015.

On the basis of the undisputed evidence that the Landlord has an Order of Possession, dated December 31, 2015, which is effective two days after it is served upon the Tenant, I find that the Tenant is not obligated to pay rent for the entire month of January of 2016. I find that she is obligated to pay rent, on a per diem basis, for the five days in January that she has remained in possession of the rental unit. Per diem rent for January is \$14.52 and I therefore find that the Tenant owes \$72.60 in rent for January of 2016.

I have not awarded greater compensation for rent for January of 2016, as it is entirely possible the Tenant may vacate the rental unit after the hearing. The Landlord retains the right to seek additional rent if the rental unit is not vacated.

In adjudicating the Landlord's claim for unpaid rent, I have placed no weight on the Tenant's submission that she paid \$150.00 to repair the hot water tank, as it has no direct bearing on the Landlord's claim for unpaid rent. Even if this were true, the Tenant would not have had the right to deduct this payment for rent owed as she has not yet provided the Landlord with a receipt for the alleged repair, as is required by section 33(5) of the *Act*.

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 \$722.60, which is comprised of \$672.60 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. 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: January 06, 2016

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Residential Tenancy Branch

