



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on September 24, 2015. The Landlord filed seeking a Monetary Order for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on September 24, 2015.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served notice of this hearing on September 29, 2015, five days after they were mailed, in accordance with Section 90 of the *Act*. The hearing continued to hear the undisputed evidence of the Landlord.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a verbal month to month tenancy agreement that began on January 28, 2014. Rent of \$1,400.00 was due on or before the first of each month and on or around January 28, 2014 the Tenant paid \$700.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the rent the Landlord served the Tenant with a 10 Day Notice via registered mail on September 2, 2015. The

Landlord stated he had agreed to work with the Tenant to make up his rent by hiring the Tenant to complete some work on the house.

The Landlord stated he credited the Tenant's unpaid rent with \$2,000.00 which was comprised of \$800.00 for roof work the Tenant completed; \$500.00 because the Tenant replaced the gutters; and the Landlord agreed to use the \$700.00 security deposit towards rent.

The Landlord argued the Tenant remained in the rental unit from July 2014 to December 2014 without paying rent. The Landlord agreed to only charge the Tenant \$7,000.00 for 5 month's rent (5 x \$1,400.00) the period of July 2014 to November 2014; even though the Tenant remained in the rental unit in December 2014.

The Landlord testified the Tenant paid him \$2,000.00 on October 25, 2014. The Landlord submitted the Tenant still owes him \$3,000.00 (\$7,000.00 less \$2,000.00 credited, less \$2,000.00 payment on October 25, 2014).

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Residential Tenancy Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord. I find the Tenant breached section 26 of the Act by failing to pay his rent in accordance with the tenancy agreement. Accordingly, I grant the Landlord's application for monetary compensation in the amount of \$3,000.00. The Tenant is hereby ordered to pay the Landlord the amount of **\$3,000.00** forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$3,000.00** which may be enforced through Small Claims Court upon service to the Tenant.

### Conclusion

The Landlord was successful with his application and was granted a Monetary Order in the amount of **\$3,000.00**.

This decision is final, legally binding, and 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: April 14, 2016

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Residential Tenancy Branch

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