



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, 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 for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on March 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, documents the Landlord submitted to the Residential Tenancy Branch on March 15, 2016, and documents the Landlord submitted to the Residential Tenancy Branch on March 22, 2016, were posted on the door of the rental unit. The Tenant acknowledged receipt of these documents, although he does not recall when or how they were received. As the Tenant acknowledged receiving the documents, they were accepted as evidence for these proceedings.

On April 14, 2016 the Landlord submitted 10 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the door of the rental unit on April 11, 2016. The Tenant stated that he did not receive these documents. As the parties acknowledge that the Landlord removed all of the remaining property from the rental unit on, or about March 19, 2016, I find it reasonable for the Landlord to conclude that the Tenant was no longer living in the rental unit on April 11, 2016. I therefore find that the evidence posted at the rental unit on April 11, 2016 was not served in accordance with section 88 of the *Act*, and I do not accept it as evidence for these proceedings.

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

### Preliminary Matter

This commenced at the scheduled start time of 9:00 a.m. on April 19, 2016. The Tenant did not join the teleconference until approximately 9:09 a.m. The issues discussed prior to the Tenant dialing into the conference were reviewed with the Tenant, which related

primarily to service of documents. The Tenant was given the opportunity to respond to the Landlord's submissions regarding service of documents.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

### Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on November 09, 2014;
- the parties signed a written tenancy agreement;
- the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month;
- the Tenant still owes \$500.00 in rent for December of 2015; and
- the Tenant has paid no rent for January, February, or March of 2016.

The Tenant stated that:

- this tenancy began in July or August of 2013;
- the parties did not sign a written tenancy agreement;
- the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month; and
- that the Landlord agreed that there would be a three day "grace period" for paying the rent, which meant he had until the fourth day of each month to pay the rent;
- he still owes \$250.00 in rent for December of 2015; and
- has not paid rent for January, February, or March of 2016.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of March 02, 2016, was posted on the door of the rental unit on February 26, 2016. The Tenant acknowledged receiving the Notice to End Tenancy on February 26, 2016, although he does not recall how it was received.

The Tenant stated that on March 08, 2016 he filed an Application for Dispute Resolution disputing the Ten Day Notice to End Tenancy he received on February 26, 2016. The Tenant provided the Residential Tenancy Branch file number for the Application he filed, which appears on the first page of this decision.

The Agent for the Landlord stated that the Tenant has served the Landlord with this Application for Dispute Resolution; however the Tenant did not apply to cancel the Notice to End Tenancy in that Application.

With the consent of both parties I have viewed the Application for Dispute Resolution filed by the Tenant and have confirmed that it did not include an application to set aside a Notice to End Tenancy.

The Landlord submitted a rent receipt, dated December 03, 2015, which declares the Tenant paid \$500.00 in rent for December. The Landlord and the Tenant agree that the Tenant typically wrote the rent receipts on behalf of the Landlord and that the Landlord signed the rent receipt after it was completed by the Tenant. The Agent for the Landlord stated that the Landlord did not sign the rent receipt dated December 03, 2015. The Tenant stated that the Landlord initialed the rent receipt dated December 03, 2015.

The Agent for the Landlord stated that the Landlord does not read or write.

The Agent for the Landlord stated that the Tenant told her he paid \$500.00 in rent for December of 2015, which she believed, and that she subsequently made a notation by the rent receipt that \$500.00 was paid. She stated that after she submitted a copy of the rent receipt in evidence, the Landlord told her that the Tenant only paid \$250.00 in rent for December of 2015.

The Agent for the Landlord stated that she does not believe the Tenant was living in the rental unit since December of 2015; that he left personal property in the rental unit; and that he periodically came to the rental unit to pick up personal property.

The Tenant stated that he was in the hospital and convalescing at the home of a friend since December of 2015. He stated that he had personal property in the rental unit; he did not abandon or vacate the rental unit; and he intended to continue living in the rental unit in spite of the Ten Day Notice to End Tenancy that had been served to him.

The Agent for the Landlord stated that she spoke with the Tenant on February 02, 2016 and asked him to move his property from the rental unit; that Tenant advised her that he did not intend to move the property; that she subsequently concluded that the property had been abandoned; and that on March 19, 2016 she moved the Tenant's property out of the rental unit and into storage.

The Tenant stated that the Agent for the Landlord did not speak to him about moving his property at any time and he does not believe she had the right to move his property out of the rental unit.

### Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$750.00 and that by February 26, 2016 he had not paid all of the rent that was due for December of 2015, January of 2016, or February of 2016.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that on, or about, February 26, 2016 the Tenant received a

Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, which declared that he must vacate the rental unit by March was posted at the rental unit on March 02, 2015.

As the Tenant had not paid all of the rent that was due by February 26, 2016 and he was served with a Ten Day Notice to End Tenancy, I find that the landlord had the right to end the tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

There is a general legal principle that places the burden of proving a loss on the party that is claiming compensation. In these circumstances the burden of proving that rent is owed rests with the Landlord.

On the basis of the testimony of the Tenant, I find that he owes at least \$250.00 in rent for December of 2015 and that he must pay that amount to the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant owes more than \$250.00 in rent for December of 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the Tenant only paid \$250.00 in rent for December or that refutes the Tenant's testimony that he paid \$500.00 in rent for December. As the Landlord has not established that more than \$250.00 in rent is due for December, I dismiss the Landlord's claim for unpaid rent in excess of \$250.00.

In adjudicating this matter I have placed little weight on the receipt dated December 03, 2015. As the receipt does not appear to be signed by the Landlord, I cannot conclude that he agreed to the content of the receipt that had been prepared by the Tenant.

On the basis of the undisputed evidence I find that the Tenant had property in the rental unit in January and February of 2016; that he was temporarily staying elsewhere during those months; that he did not vacate the rental unit during those months; and he did not pay rent for those months. I therefore find that the Tenant is obligated to pay \$1,500.00 in rent for January and February of 2016.

On the basis of the undisputed evidence I find that the Landlord moved the Tenant's property out of the rental unit on March 19, 2016. As the Tenant testified that he had not vacated the rental unit by March 19, 2016 and he did not intend to vacate the rental unit by that date, I find that he is obligated to pay rent for those 19 days. Per diem rent for this rental unit in March was \$24.19 and I therefore find that the Tenant owes \$459.61 in rent for those 19 days.

I have made no finding on whether or not the Landlord had reasonable grounds to remove the Tenant's property on March 19, 2016, as that is not an issue to be determined at these proceedings. Rather, I have simply determined that the Tenant should not be obligated to pay rent once the Landlord emptied the unit of his personal possessions.

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.

As the Landlord has not applied to retain the security deposit in this Application for Dispute Resolution, I have not considered that matter at these proceedings. The Landlord remains obligated to retain/return that deposit in accordance with the Act.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,309.61, which includes \$2,209.61 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,309.61. In the event 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: April 19, 2016

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Residential Tenancy Branch