



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

### **Dispute Codes**

OPC, MNR, MNDC, MNSD, MND, FF

### **Introduction**

#### *Reason for Review Hearing*

This hearing was reconvened in response to a successful Application for Review filed by the tenant – granting a Review Hearing based in respect to the tenant’s evidence purporting the original Decision was obtained by fraud. The Review Consideration Decision states the tenant substantiated a Review Hearing solely in relation to the particulars giving rise to the monetary claim of the landlord in relation to unpaid rent and the resulting Monetary Order of the Decision, now suspended. Therefore, this Review Hearing is thus limited to this scope. The balance of the original Decision is not in dispute, with re-argument of those findings unnecessary.

Both parties were represented in this Review Hearing.

The tenant acknowledged receiving the evidence of the landlord. The tenant acknowledged not serving evidence in this matter. In particular, not having served the landlord a copy of the evidence they advanced in support of their Application for Review asserting fraud had been perpetrated, as they were ordered / instructed by the Review Consideration Decision. As a result, I find all document evidence submitted by the tenant for their Application for Review inadmissible. None the less, both parties were permitted to provide testimonial evidence and to rely on document evidence before the original hearing and currently in possession by both parties and this hearing. The parties were otherwise given opportunity to fully participate in the conference call hearing and make final submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issues to be Decided**

Is the landlord entitled to the monetary amount claimed?

Should the original Monetary Order be confirmed, set aside or varied?

### **Background and Evidence**

From the original Decision the following remains undisputed. The tenant and the landlord signed a tenancy agreement on February 29, 2012. The contractual tenancy began March 1, 2012 on a month-to month basis. The agreed payable monthly rent in the amount of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the landlord collected a security deposit of \$750.00 retained in trust. It must be noted the rental unit and the tenant are situated on Vancouver Island and the landlord is situated on the Mainland of British Columbia. Further, that an abundance of communication between the parties has been by electronic means.

The landlord claims the parties agreed as of March 2013 that the tenant would rent the entire house of this matter for the monthly amount of \$2200.00. In support of this assertion the landlord advanced a portion of a text thread dated November 16, 2012 in which the tenant enquires, "And how much if I just rent the whole house"?, to which the landlord replied, "Knocking off a few bucks probably looking at \$2200.00" – as written. The landlord also provided into evidence banking information itemizing the tenant's monthly rent deposits to the landlord, from April 2012 to March 2016. These records are annotated by the landlord, to coincide with the landlord's version and understanding of the rent and the rent owed each month, the amount actually deposited / remitted by the tenant, the difference of the latter, and the running *year to date* accounting of the rent.

The landlord annotated their evidence highlighting that as of March 2013 the tenant began owing monthly rent of \$2200.00. Additional evidence by the landlord is that a previous tenant had rented the entire house for \$2350.00 per month.

The tenant disputes the landlord's version of the payable rent. The tenant claims that the agreement they had made with the landlord was that they would rent the entire house and that the rent amount would be "variable" and, "whatever I could afford". The tenant testified that sometime in the period of January to March 2013 they met face to face with the landlord at which meeting they and the landlord agreed the tenant would manage the multiple suites of the house in exchange for whatever the tenant could afford. The landlord denied such a meeting ever took place. The tenant relies on an e-mail provided into evidence by the landlord dated January 07, 2013, in which the tenant offers the landlord to, effectively, manage the house and related rental suites, "In exchange, my rent is reduced to allow me to continue living here" – as written. Neither party was able to provide any evidence purporting to what followed in response, neither

to the tenant's offer nor as to the purported reduction in the rent. The tenant also relies on an e-mail provided by the landlord into evidence dated March 23, 2013 which the tenant claims verifies an agreement by the landlord, and as to the tenant's version of the payable rent. However, in discussion it was acknowledged by both parties the e-mail does not address an agreement respecting rent. The landlord testified that the e-mail stated their frustration the tenant had only paid \$700.00 in rent, compromising their finances and seeking from the tenant an early resolve to the situation. The parties agreed that at no time has the landlord issued a Notice to End for unpaid rent.

In summary, the tenant claims an oral agreement with the landlord translates into them owing no additional rent to the landlord for their tenancy other than they have already remitted. And, the landlord makes claims of an agreement with the tenant to rent the entire house, resulting in serial arrears in rent. The landlord claims that solely for the period of November 01, 2014 to April 01, 2016, inclusive, the tenant's arrears are the sum of \$13,100.00.

### **Analysis**

On preponderance of all the relevant evidence advanced by the parties I find as follows.

I find that neither party has advanced any credible evidence confirming, documenting, nor in any way establishing the existence of a purported oral tenancy agreement, in dispute, following the written tenancy agreement of the parties signed on February 29, 2012. I have not been presented with evidence substantiating the existence of the rent terms in dispute, even on a balance of probabilities. I find the landlord has not provided evidence indicating communication of an agreement by the parties that the payable rent as of March 2013 was to be paid by the tenant in the amount of \$2200.00. I find the tenant has not provided evidence indicating communication of an agreement by the parties that the payable rent as of March 2013 was to be paid by the tenant on variable terms or as affordable to the tenant. The parties have presented evidence supporting their version of events, which is in such contrast that it is confusing and does not make sense. Neither party has advanced proof, on a balance of probabilities, of what amount of rent was agreed payable from March 2013 forward.

None the less, in the absence of all other evidence there is undisputed evidence that the parties entered into a tenancy agreement in February 2012 establishing the payable monthly rent as \$1500.00. And, in the absence of evidence the parties subsequently mutually agreed to different terms respecting the rent, I find this original contract has remained in full force, with a payable monthly rent of \$1500.00.

As a result of all the above, I accept the landlord's uncontested evidence respecting the rent remittance history of the tenancy for the period April 2012 to March 2016, establishing that to February 2013 the tenant was then in arrears of rent in the accumulated sum of \$2993.00. From this basis I find as follows.

*Calculation for Monetary Order*

**Tenancy start: March 01, 2012**                      **+ or (–) the agreed rent of \$1500.00 remitted by tenant**

<i>Rent arrears to February 2013</i>	-2993.00
March 2013	-450.00
April	-500.00
May	-400.00
June	-700.00
July	-700.00
August	-700.00
September <i>no rent paid</i>	-1500.00
October	550.00
November	-20.00
December	350.00
January 2014	250.00
February	350.00
March	-300.00
April	250.00
May	350.00
June	-100.00
July	50.00
August	150.00
September	50.00
October	-500.00
November	-300.00
December	100.00
January 2015	150.00
February	-300.00
March	-100.00
April	500.00
May	500.00
June	200.00
July	300.00
August	250.00
September	150.00
October	150.00
November	150.00
December	150.00
January 2016	100.00
February	-400.00

<i>March</i>		-400.00
<i>total rent remittance</i>	<i>arrears</i>	( - \$6613.00 )
filing fee	to landlord	100.00
<i>security deposit</i>	<i>to landlord</i>	-750.00
<b>Monetary Order</b>	<b>to landlord</b>	<b>\$ 5963.00</b>

I make no finding in respect to April or May 2016 rent.

### **Conclusion**

**I Order** that the previous Monetary Order dated April 20, 2016, currently suspended, is set aside.

**I Order** that the landlord retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$5963.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

I Order that the balance of the original Decision stands and in full force.

**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: June 09, 2016

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Residential Tenancy Branch