



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNR, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated May 17, 2016

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on May 17, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 23, 2016.

### Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated May 17, 2016?

### Background and Evidence

The parties entered into written tenancy agreement that provided the tenancy would start of December 1, 2015 and continue on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$1150 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$375 on December 1, 2015. .

The landlord testified as follows:

- The rent is \$1150 per month. The tenant pays \$375 per month to the landlord by direct deposits. The tenant has failed to pay the rent and owes the sum of \$775 for June 2016, \$775 for May 2016 and \$775 for April 2016 and \$600 for March 2016.
- In addition the tenant owes money for cablevision and telephone.

The tenant disputes this. She testified as follows:

- She withheld \$600 of the rent in March and gave the landlord receipts to cover this sum for work done on the rental property.
- Her father paid the landlord cash for the balance of the rent for May and June.
- The landlord refuses to issue receipts.
- The tenancy agreement provides that cablevision and phone is included with the rent.

The landlord adamantly denied the tenant's father or anyone paid the balance of the rent as alleged. Further, she testified the tenant retained the tenancy agreement and added items to it such as cablevision and phone being included with the rent which was not agreed upon.

Analysis:

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)"

After hearing the disputed evidence I determined the testimony of the tenant that the balance of the rent for May and June was paid in cash is not credible for the following reasons:

- The Details of Dispute contained in the Tenant's Application for Dispute Resolution dispute the amount owing but does not state that the rent was paid for rent. If the tenant had paid this sum one would expect that it would be mentioned.
- The tenant withheld \$600 of rent for March. She acknowledges this in her Application for Dispute Resolution. The Residential Tenancy Act does not permit a party to withhold rent unless an arbitrator's order has been obtained permitting this.
- The tenant's testimony that the rent was paid for June is not credible. I do not accept the testimony that a tenant would pay the rent in cash without first obtaining a receipt for this payment knowing there is a dispute relating to the payment of rent.
- The tenant failed to produce bank statement or other evidence to prove this payment was made.
- The tenant's father allegedly made the payment. He did not attend the hearing and did not provide any evidence.

- I prefer the evidence of the landlord that the tenant owes \$775 in rent for each of April, May and June. I am also satisfied the tenant withheld \$600 of the rent for March.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I determined that rent is owed. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I advised the parties at the hearing that normally the Order for Possession would be on 2 days notice. However, I have considered tenant's situation and I set the effective date of the Order for Possession for July 1, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 21, 2016

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Residential Tenancy Branch