



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR MNDC FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and damage to the rental unit. The landlord, a witness for the landlord, the tenant and a witness for the tenant participated in the teleconference hearing.

At the outset of the hearing, the tenant stated that he had filed his own application to cancel the notices to end tenancy that were the subject of the landlord's application. The tenant's application is scheduled to be heard on September 12, 2016. The landlord stated that he did not have the tenant's evidence with him, as the tenant served the landlord with his evidence together with the hearing package for the tenant's application, and the landlord thought the tenant's evidence was only related to the tenant's application. I found that it was reasonable for the landlord to think this, as the tenant did not separately serve the landlord or otherwise inform him that the evidence related to both applications. Further, the tenant did not submit his evidence within the required time set out in the Rules of Procedure. I therefore did not consider the tenant's documentary and photographic evidence in this hearing.

I informed the parties that the issue of the notice to end tenancy took precedence, and I only heard evidence on the notices to end tenancy and the landlord's monetary claim for the unpaid rent that was subject of the notices. I will address the landlord's claim for compensation for damage to the rental unit in the conclusion of my decision.

The parties were given full opportunity to give affirmed testimony and present their admissible evidence. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord stated that in 2014 he bought the four-plex in which the rental unit is located. The landlord stated that the original tenant, JH, passed away in 2015, and at that time the tenant asked the landlord if he could stay on in the unit. The landlord agreed. The parties agreed that rent in the amount of \$595.00 is payable in advance on the first day of each month. The landlord stated that the tenant failed to pay \$200.00 of the rent in April 2016, and paid no rent for June 2016. On June 13, 2016, the landlord served the tenant with two notices to end tenancy for non-payment of rent, one for April and one for June. The tenant further failed to pay rent for July or August 2016.

The landlord stated that he first contacted the tenant on June 13, 2016 and the tenant said he did not have the rent money. The landlord stated that he then told the tenant to call him back when he had the money. The landlord stated that the tenant did not call back, and on June 21, 2016 the tenant stated that he still did not have the rent. The landlord stated that on June 26, 2016 the tenant tried to pay him a portion of the rent, but he refused payment because he wanted all that was owed.

The landlord stated that at the time of the hearing the tenant owed a total of \$1,985.00 in outstanding rent.

The tenant stated that he has had the rent money from day one, but the landlord refuses to accept it. The tenant's witness stated that she was present when the landlord came by, around June 6, 2016, and told the tenant he would be back to collect the rent in a few days. The witness stated that the landlord returned around June 13, 2016 and the tenant grabbed some money and put it in his pocket and went to the door. The witness stated that the tenant tried to pay the rent but the landlord refused and gave the tenant two notices to end tenancy for unpaid rent. The witness stated that she knew at the time that the tenant owed \$800.00 in rent, but she did not know at the time how much money the tenant grabbed and put in his pocket.

### Analysis

I find that the landlord's evidence was more reliable than that of the tenant and the tenant's witness. The landlord clearly indicated what dates he communicated with the tenant, whereas the testimony of the tenant and his witness was vague. The tenant did not make an application to dispute either of the notices to end tenancy until after the landlord applied for an order of possession, and he did not pay rent for July or August. I accept the landlord's evidence that the tenant failed to pay the full rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notices. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$1,985.00 in unpaid rent and lost revenue. As the landlord's application is successful, he is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord's application for an order of possession is successful, as is the landlord's application for monetary compensation for unpaid rent and lost revenue. The landlord's application for further monetary compensation for damage caused by the tenant is dismissed with leave to reapply. I note that that tenant has the right to repair any damages before the move-out inspection.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to \$2,085.00. As per section 72 of the Act, the landlord may retain the security deposit in partial satisfaction of the amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regard to the tenant's application scheduled to be heard on September 12, 2016, I have already determined that the notices to end tenancy for unpaid rent are valid, and I have ended the tenancy based on those notices. Therefore, any matter regarding the notices dated June 13, 2016 is *res judicata*, as it has already been determined.

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: August 5, 2016

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Residential Tenancy Branch