



# 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 was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The parties attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The tenant advised me there was an error in the spelling of the tenant's last name. The parties did not raise any objections to the error being corrected and this has now been amended on the style of cause.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?

Background and Evidence

The parties agreed that this tenancy started with the tenant's former landlord on November 03, 2014. This landlord purchased the property sometime either in December, 2015 or January, 2016. Rent for this basement unit is \$600.00 per month due on the first of each month.

The landlord's agent testified that the tenant paid rent for January, 2016 and a rent receipt was provided signed by both the landlord and tenant. The landlord's agent testified that the tenant has not paid any rent since that time and now owes rent from February to October, 2016 to an amount of \$5,400.00. The landlord's agent testified that the tenant was served in person with a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) on August 05, 2016. The Notice informed the tenant that he owed rent for August, 2016 of \$600.00 and that the tenant had five days to either pay the outstanding rent, or file an application to dispute the Notice, or the tenancy would end on August 15, 2016.

The landlord testified that the tenant did not pay the rent and also failed to pay rent for October, 2016. The landlord seeks an Order of Possession effective within 48 hours and a Monetary Order to recover the unpaid rent and the filing fee of \$100.00.

The landlord testified that he wants to use the basement unit as part of the main house for his family use and therefore wants the tenant to vacate the basement unit.

The tenant disputed the landlord's claims. The tenant testified that the landlord did not move into the upper unit until January 2016 and the tenant then paid his rent for January to the landlord on January 05, 2016. The tenant testified that he did get a rent receipt for that cash payment in January. In February, March and April the tenant paid rent to the landlord but was not provided with a receipt from the landlord. The tenant testified that his friend who cleans the tenants unit for him paid his rent on his behalf while he was working for May and June, 2016 but again no receipt was provided.

The tenant testified that he paid his rent in July and the landlord served him with a 10 Day Notice to End Tenancy for unpaid rent on July 27, 2016. On August 01, 2016 the tenant friend went to pay the tenant's rent to the landlord but the landlord refused to take it. On August 05, 2016 the landlord served the tenant with this Notice. The tenant also tried to pay the rent to the landlord but he refused to accept it and told the tenant that he had taken rent from someone else who was going to be moving in. The tenant testified that this was confusing as the landlord also told the tenant that he and his son were going to move into the unit as the landlord was having trouble with his pension.

The tenant calls his witness TM. TM is the tenant's friend and testified that the tenant paid rent himself to the landlord for February, March and April, 2016. TM testified that she paid the tenant's rent to the landlord on May 01 and June 01, 2016. TM testified that she asked the landlord for a receipt but was told he would bring one later. TM testified that to her knowledge the landlord never provided those receipts to the tenant. TM testified that on August 01, 2016 she went to pay the tenant's rent again but the landlord refused to accept it and said he had taken rent from someone else. TM testified that as the tenant was home he also tried to pay the rent but the landlord refused to accept it from the tenant.

The landlord's agent asked TM when it was that she came to pay rent to the landlord in August. TM responded it was on August 01, 2016 and rent was paid on May 01 and June 01, 2016.

The tenant testified that he still has his rent for August, September and October. He has not paid September and October as the landlord will not accept the rent but he is willing to pay it to the landlord today.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: The landlord has the burden of proof to show that the tenant has failed to pay rent from February to October, 2016. The landlord has provided a copy of the 10 Day Notice to End Tenancy dated August 05, 2016. This Notice only indicates that rent is outstanding for August of \$600.00. No other documentary evidence such as a rent ledger has been provided in documentary evidence.

The tenant testified that rent was paid from February to July, 2016 and his witness corroborates that evidence. The tenant testified that he and his witness both attempted to pay rent for August, 2016 but the landlord refused to accept it. The landlord disputed this. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the landlord has not provided sufficient evidence to show rent is outstanding from February, to July 2016. I am satisfied from the evidence before me from the tenant and his witness that the tenant and his witness attempted to pay rent for August, 2016 and that this was refused by the landlord. A landlord may not refuse to accept rent for any given month and then serve the tenant with a notice to end tenancy. Consequently, I find the Notice is set aside and the tenancy will continue at this time until legally ended under the *Act*.

The tenant agreed as the landlord would not accept the rent for August that the tenant still holds this rent and the rent for September and October. The tenant agreed to pay this rent today to the landlord.

The landlord will be issued with a Monetary Order for rent for August, September and October, 2016 for the amount of \$1,800.00. If the tenant fails to pay the rent as agreed today the landlord may serve the tenant with this Monetary Order.

I caution the landlord that if he wants to use the basement unit for his or his close families use then he must serve the tenant with a Two Month Notice to End Tenancy under s. 49 of the *Act*. I also caution the landlord that if the tenant offers rent then the landlord must accept that rent and if it is paid in cash a receipt must be provided to the tenant.

As the landlord's application has little merit I find the landlord is not entitled to recover the filing fee from the tenant.

### Conclusion

The landlord's application for an Order of Possession is dismissed.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,800.00**. The Order must be served on the respondent if the respondent fails to pay this amount to the landlord today. Should the respondent then fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: October 07, 2016

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Residential Tenancy Branch

