



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This was a hearing with respect to the landlord's application for an order of possession and a monetary order. The hearing was conducted as an in-person hearing at the office of the Residential Tenancy Branch in Burnaby. The landlord and the tenant attended the hearing. The tenant was accompanied by a friend who was present throughout the hearing, but did not participate. At the hearing the tenant advised that she moved out of the rental unit on October 1, 2016. Because the tenancy has ended the landlord does not require an order of possession and the landlord's application for an order of possession is dismissed. The landlord's application was filed on August 15, 2015. Initially he sought only an order of possession. On September 12, 2016 the landlord filed an amendment to his application for dispute resolution to claim unpaid rent for August and September in the amount of \$2,400.00.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

### Background and Evidence

The rental unit is a house in Abbotsford. The landlord testified that the tenancy began approximately one year ago. There is no written tenancy agreement. The landlord testified that the tenant did not pay a security deposit and as a practice he does not collect security deposits from his tenants.

The landlord said that the tenant did not pay rent for August. He served the tenant with a 10 day Notice to End Tenancy on August 1, 2016, but did not rely upon it because the tenant pointed out to him in a letter that the Notice to End Tenancy was premature and therefore invalid. The landlord served the tenant with a second 10 day Notice to End Tenancy dated August 5, 2016. The landlord testified that the tenant paid no rent for August or for September and has now moved out of the rental unit.

The landlord lives in the house next door to the rental unit. The tenant testified that she gave the landlord a letter dated August 5, 2016. She said in the letter that the 10 day Notice dated August 1, 2016 is not valid; she also said:

Please present me with a new 10-day eviction notice that is valid for the rent that is due August 1, 2016 and I will pay you the monies accordingly in the 5 days that it will be due.

The tenant claimed in the letter that there was a verbal agreement whereby she was allowed to pay the rent in two instalments of \$600.00 each. The tenant said that the landlord was also obliged to give her a receipt. She also said that she had been to the police station and quoted a reference number without specifying any other details.

Before the hearing commenced the tenant also said that the landlord was not to have contact with her and said she was reluctant to enter the hearing room with the landlord unless her companion was present. The tenant did not submit any documents with respect to a police report. She said she had filled out a "Freedom of Information Act form" and further information could be had by telephoning L.G., a police constable.

The tenant said she paid the landlord \$600.00 in cash on August 10, 2016 by leaving the money in the outside mailbox of the rental unit. She provided a copy of a text message sent to the landlord's daughter wherein she asked the daughter to let her father know that the money had been left in the mailbox. The tenant did not include a copy of any response or reply to the text message to the daughter.

The tenant said that on August 19, 2016 she made a further payment of \$600.00 by leaving it in the same mailbox. She said that once again she sent a text message to the landlord's daughter. The tenant submitted a copy of a text message that said: "Please tell your dad rent will be in mailbox at 1:00pm". The message was undated; it said at the bottom "Fri 6:39AM". She submitted a second message with the time: Fri 5:17PM. The message said: "The rent is still in the mailbox. Can you let your dad know please".

The tenant did not include copies of replies to any of the text messages claimed to have sent. The tenant said at the hearing that she has not paid any rent for the month of September. At the end of the hearing the tenant testified that she paid the landlord a security deposit of \$600.00 at the beginning of the tenancy. The tenant did not submit a receipt or any other confirmation that she paid a deposit. The landlord denied that any deposit was paid. The landlord said that there was no agreement that the tenant could pay the rent in two instalments. He said that earlier in the tenancy, the tenant fell behind in her rent and he let her make some late payments in order to catch up in her rent. The landlord testified that he was not notified of text messages from the tenant

and he did not receive any rent payments from the tenant. He said that his daughter is a busy health care professional; she works full-time at a hospital. She is not responsible for any dealings with the tenant and has no time to consider or respond to the tenant's text messages. He said that it is incomprehensible that the tenant would leave cash in the mailbox of the rental unit rather than delivering the rent to the landlord at his house next door as she has done throughout the tenancy. The landlord testified that the tenant has made some allegations of impropriety or sexual misconduct that are fabricated, false and offensive. He said that he has been happily married for 50 years and the tenant's ambiguous accusations are intended as a distraction. The landlord brought a character witness to the hearing. The intended witness was excluded from the hearing and I did not call upon him to provide testimony.

The tenant insisted that rent was put in the mailbox of the dates mentioned; she said that the recent practice has been for her to pay the rent by leaving it in the mailbox. She did not say why she would engage in such a practice after telling the landlord in her August 5<sup>th</sup> letter that she expected to receive a receipt from the landlord for cash payments.

The tenant did not submit any corroborating evidence, such as bank withdrawal statements to support her testimony as to cash payments.

### Analysis

Apart from her testimony, the tenant's sole evidence as to cash payments are several photocopies said to be reproductions of text messages sent to the landlord's daughter. The tenant did not provide copies of any responses that she may have received to her text messages and she did not say whether there were replies to them. I did not find the tenant's testimony as to August rent payments to be credible. The tenant was served with a Notice to End Tenancy on August 1, 2016. She received a second Notice on August 5, 2016. The tenant is familiar with the provisions of the *Residential Tenancy Act* and the requirement to pay rent within 5 days of receiving a Notice to End Tenancy for unpaid rent. Instead of delivering the rent and exchanging it for a receipt or paying it by providing the landlord with a postal money order or bank draft so there would be a record of the payment, the tenant claimed that she left cash in an unsecured mailbox and did not advise the landlord, but sent a text to his daughter. The tenant justified her failure to communicate with the landlord upon vague and unsubstantiated allegations that he engaged in some form of unspecified misconduct. Although the tenant received no acknowledgement from the landlord with respect to her claimed payment of \$600.00 on August 10<sup>th</sup>, she testified that on August 19<sup>th</sup>, she repeated the exercise of placing \$600.00 cash in her mailbox and again sent a text message to the landlord's daughter. The landlord denied that he received either payment. I accept and prefer the landlord's testimony to that of the tenant. The tenant's claimed actions of leaving large amounts of

cash in an unprotected mailbox, when it could have easily been delivered to the landlord at his next door house does not accord with what would be reasonable and common-sense behaviour. The tenant's allegations of misconduct by the landlord appear to be made as an excuse to justify the tenant in avoiding contact with the landlord. In his written submission the landlord expressed that he is profoundly offended by the tenant's innuendo; he noted that he is 77 years old, a cancer survivor, educated and proud of his standing in the community, with absolutely no interest in any form of sexual contact with the tenant as she suggested with her reference to him: "asking for "favors" that are unacceptable". I accept and prefer the landlord's evidence on this point and I prefer his testimony when it differs from the evidence of the tenant.

I find that the tenant failed to pay rent for the months of August and September before she vacated the rental unit on October 1, 2016. I accept the landlord's testimony that the tenant was not asked for and did not pay a security deposit at the beginning of the tenancy or at any time thereafter.

I allow the landlord's claim as amended and award the sum of \$2,400.00 as unpaid rent for August and September. The landlord is entitled to recover the \$100.00 filing fee for his application for a total award of \$2,500.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's application for a monetary order has been allowed in the amount stated.

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 11, 2016

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Residential Tenancy Branch