



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession for non-payment of rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's) application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and procedural matter

In this case both parties have filed amendments to their applications; however, I find neither of their respective amendments is sufficiently related to the primary issues listed

in their original application. Therefore I will only consider the issues set out in their original applications. All matters not on the original application are dismissed with leave to reapply.

The tenant indicated that they vacated the property on August 22, 2016. Therefore, I find it not necessary to consider the landlord's application for an order of possession or the tenant's application to cancel a notice to end tenancy. Since this hearing was initiated by the tenant to cancel the notice to end tenancy and the tenant vacated prior to the hearing. I find the tenant is not entitled to recover the filing fee from the landlord. The tenant's application is dismissed.

#### Issue to be decided

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

#### Background and Evidence

The tenancy began November 2014. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant. The tenancy ended on August 22, 2016.

The landlord's agent testified that the tenant did not pay rent for August 2016. The agent stated that the landlord tried to speak to the tenant several times. However, each time the tenant refused to pay rent and became hostile.

The landlord's agents testified that on August 18, 2016, the tenant was served with a notice to end tenancy for non-payment of rent, which was posted on the door. The agent stated that the tenant was very upset and angry when they found the notice and started kicking the door to the rental unit and then attended the landlord residence kicking the landlord's door and was threatened the landlord that they had gangster ties in Hong Kong. The agent stated the police were called.

The tenant testified that they always pay rent in cash and normally the day before rent was due. The tenant stated the landlord was given rent on July 30, 2016 and did not give them a receipt.

The landlord's agent argued that in July 2016, the landlord discovered that the rental unit was not being used for its intended purpose as the tenant was using it as a storage locker and was denied access to ascertain what items were being stored. The agent

stated that the tenant was angry defensive and refused to disclose what was being stored.

The landlord's agent indicated that after the dispute the tenant did not pay the August 2016. The agent stated that the normal practice when the tenant paid rent in cash was that they would both sign the ledger that rent was received. The agent stated that the ledger document was created by the tenant. The agent stated if rent was paid to the landlord as alleged by the tenant there is no way that the tenant would not make the landlord sign something, even a piece of paper, to show the rent was given. Filed in evidence is a copy of the ledger which support the landlords position.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the evidence of the landlord's agent over the tenant that the tenant did not pay August 2016, rent, as it has the ring of truth. The tenancy commenced in 2014 and the payment of rent has not been an issue. In July 2016, the landlord confronted the tenant as they believed the rental unit was not being used for the intended purpose and they wanted to know what was being stored in the rental premises. Only after that rent became an issue.

Further, the tenant disputed the notice as they stated rent was paid, yet the tenant vacated the rental unit 4 days after receiving the notice. I find the tenant's actions not reasonable if rent was paid.

I find the tenant breached the Act when they failed to pay rent and this caused losses to the landlord. Therefore, I find the landlord is entitled to a monetary order for unpaid rent in the amount of \$600.00.

I find that the landlord has established a total monetary claim of **\$700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Although the landlord did not request to retain the tenant's security deposit in their application; I find it appropriate to offset the amount owed with the security deposit. Therefore, I order that the landlord retain the security deposit of **\$300.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$400.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The tenant's application is dismissed. The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 14, 2016

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Residential Tenancy Branch