



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant: CNR, O  
Landlord: OPR, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied February 07, 2017:

1. To Cancel a Notice to End for Unpaid Rent received February 04, 2017 - Section 46

The landlord applied February 21, 2017 for:

1. An Order of Possession - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. A Monetary Order for compensation for damage and loss – Section 67
4. Recover the filing fee – Section 72

Both parties attended the hearing and each had opportunity to make relevant prior submissions of evidence to the hearing. Each was given opportunity to present relevant evidence and testimony in respect to their claims and to participate in the conference call hearing. Both parties acknowledged receiving the evidence of the other within the prescribed time to do so, as was provided to this proceeding. The parties were provided opportunity to mutually resolve or settle their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

### **Preliminary matters**

The tenant claims they did not receive an application from the landlord seeking an Order of Possession and a Monetary Order for unpaid rent. The landlord provided

evidence they filed their application on February 21, 2017 and evidence they sent their application and notice of hearing package to the tenant on the same day by registered mail. The landlord's mail tracking evidence indicates the tenant was alerted to the registered mail which, despite a reminder to the tenant remains at the post office for pick up. The following must be noted.

**Section 90** of the Act states that an application in accordance with Section 89 is deemed received, if given or served by mail, on the 5<sup>th</sup> day after it is mailed.

**Residential Tenancy Branch Rules of Procedure 2.11** in respect to making a cross-application for dispute resolution to counter a claim states that a cross applicant must;

*apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [Documents that must be served with the hearing package] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [Respondent's evidence provided in single package] can be met.*

In this matter, I accept the landlord's application is deemed to have been received on February 26, 2017 pursuant to Section 90; however, too late to be considered as a counter claim to the tenant's application. As a result, I preliminarily dismiss the landlord's application, with leave to reapply.

The tenant requested an adjournment to provide an original item of evidence: a printed bank cash deposit receipt. The landlord opposed the request. The tenant claimed that if I simply viewed the original printed receipt it could confirm their version of a relevant fact in dispute. The tenant testified they were advised not to submit original documents, however did not submit a copy into evidence in its stead. I considered the request pursuant to **Residential Tenancy Branch Rules of Procedure 7.9** and the criteria within. The parties were notified that not being an expert on such matters as the authenticity of printed documents, my viewing the tenant's original bank receipt would not more fairly accommodate a resolution. I determined that an adjournment was not required to provide a fair opportunity for the tenant to be heard and that an adjournment would be prejudicial to the landlord as there was unpaid rent. The tenant's request to adjourn was denied.

The proceeding advanced solely on the merits of the tenant's application.

**Issue(s) to be Decided**

Should the landlord's Notice to End for Unpaid rent be cancelled?

### **Background and Evidence**

The tenancy began on September 01, 2016 as a written tenancy agreement. Rent in the amount of \$2000.00 is payable in advance on the first day of each month, subject to an amendment by the parties for payments of rent between December 19, 2016 and January 23, 2017. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1000.00 which they retain in trust. The tenancy continues.

The parties agree that on January 25, 2016 the landlord served the tenant with a 10 Day Notice to End tenancy for unpaid rent. The Notice to End stated the tenant owed \$1000.00 as of the date of January 23, 2017, on which same date the parties had agreed the tenant was obligated to make a payment of \$250.00 and was in additional arrears of \$1050.00. The landlord's banking transaction evidence indicates the tenant made a rent payment by cash deposit of \$300.00 at the respective bank (Scotiabank) on January 23, 2017. The tenant claims their cash deposit on January 23, 2017 was the sum of all rent owed to date in the amount of \$1300.00. The tenant claims to possess the original Customer Receipt for the cash deposit transaction of January 23, 2017, however has not provided a copy of the receipt into evidence. The tenant claims the receipt properly states they deposited \$1300.00 for the rent on January 23, 2017 to the landlord's account. The landlord's evidence of the same transaction clearly states the deposit was only \$300.00. The landlord submitted a copy of the Customer Receipt, as provided to them by the tenant.

The landlord also submitted into evidence the document results of an investigation by the bank which the landlord requested with regard to the discrepancy in the tenant's deposit on January 23, 2017. The banks' letter dated February 02, 2017 clearly states that their investigation concluded that only \$300.00 in cash was deposited to the landlord's account.

In relevant part the landlord's evidence provided by their bank states as follows;

Deposit made through a teller, but cash was counted and verified via automated cash dispensing unit in branch and logged to our systems accordingly – removing the human error factor from this transaction.

Two receipts were generated once deposit was processed (client copy and branch copy). Both receipts were reviewed with the third party to ensure the transaction was correctly processed. Once reviewed, the third party

acknowledged the deposit for \$300.00 was correct and signed the branch copy's receipt – verified by video footage. Copy of branch receipt attached.

To confirm, the third party has not raised any concerns or requested an investigation with the branch or Scotiabank with regards to a discrepancy with the deposit amount

Branch cash balanced at the end of the day on January 23, 2017 without discrepancy.

To re-iterate, only \$300.00 cash was deposited in branch by the third party on January 23, 2017 – our investigation has concluded.

*- all above as written*

The attached copy of the BRANCH COPY of the transaction's CUSTOMER RECEIPT depicts it is signed by the customer and all other particulars are identical to the tenant's copy – except for the CASH GIVEN amount stating \$300.00 on the BRANCH COPY versus the tenant's CUSTOMER RECEIPT which states \$1300.00.

The tenant testified they initially approached the bank which told them the account holder could make an enquiry. The tenant asserted that their version of the facts is the correct one and that their receipt states the true amount of the cash deposited to the landlord's account for the rent, in the discrepancy amount of \$1000.00.

On February 01, 2017 the tenant owed the monthly agreed rent of \$2000.00. On this date the parties agreed the tenant paid \$750.00. On the following day, February 02, 2017 the tenant paid \$1000.00, leaving a balance of arrears in the amount of \$1250.00.

On February 04, 2017 the landlord served the tenant with a 10 Day Notice to End for unpaid rent dated February 03, 2017 stating the tenant owed \$1250.00. The tenant argues that if the landlord accepted their version of the bank deposit amount they would only owe \$250.00. The tenant failed to pay the outstanding rent on the Notice to End within the 5 days prescribed to do so and instead determined to dispute the Notice within that period. The tenant then attempted to pay a portion of the payable rent for March 2017 on March 01, 2017 which was declined by the landlord.

The tenant testified that submission of their original receipt would confirm they deposited \$1300.00 in contrast to the landlord's submissions confirming that only \$300.00 was deposited.

### **Analysis**

Based on the preponderance of relevant evidence I find it was available to the tenant to provide their own copy of their *original* evidence, but did not. I find the landlord's bank evidence clearly shows a methodical and understandable path to their conclusion as to

the cash deposit on January 23, 2017. I find that the contrasting versions of evidence put forth by the parties cannot both co-exist as representing the true facts in this matter. I find that the evidence of the landlord, on balance of probabilities, makes sense and that of the tenant does not. Therefore, I prefer the evidence of the landlord.

I find the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. I find the tenant did not pay the outstanding rent and despite their application the tenant has not provided sufficient evidence they paid the outstanding rent or that;

1. the tenant has an Arbitrator's decision allowing the deduction
2. the landlord illegally increased the rent
3. the landlord overcharged for a security or pet damage deposit
4. the landlord has refused the tenant's written request for reimbursement of emergency repairs, or that
5. the tenant has the landlord's written permission allowing them to reduced rent.

As a result of all the above, I must **dismiss** the tenant's application seeking to cancel the landlord's Notice to End for unpaid rent.

I find the landlord's 10 Day Notice to End complies with the form and content required by **Section 52** of the act and is valid. **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I **must** grant the landlord an Order of Possession.

**I grant** the landlord an **Order of Possession** effective 2 days from the day it is served on the tenant. The tenant must be served with this 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.

### **Conclusion**

The landlord's application is dismissed with leave to reapply for monetary relief.

The tenant's application is dismissed.

The landlord is given an Order of Possession.

**This Decision is final and binding on both parties.**

*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: March 09, 2017

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Residential Tenancy Branch