



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR/FFL

### Introduction

On April 27, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlord’s evidence was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord’s representatives and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

### Issues to be Decided

Should the Landlord receive an Order of Possession for the rental unit?  
Should the Landlord receive a Monetary Order for unpaid rent?  
Should the Landlord be reimbursed for the Filing Fee?

### Background and Evidence

The Landlord and the Tenant agreed that the tenancy began on May 1, 2013 on a six-month fixed-term basis and continued as a month-to-month tenancy. The Landlord collected and still holds a security deposit of \$525.00. The current rent of \$1,163.00 is due on the first of each month.

The Landlord and the Tenant also agreed that the 10-Day Notice to End Tenancy, dated April 4, 2018 (the "Notice"), was posted on the door and received by the Tenant on April 4, 2018. The Notice had an effective vacancy date of April 14, 2018, if the Tenant did not pay the rent or apply for Dispute Resolution within 5 days of receiving the Notice.

#### Landlord Evidence:

Landlord PB testified that the Tenant was regularly late with the rent and has been for the last two years.

Agent MA testified that the Tenant did not pay the rent on April 1, 2018 and the Notice was served to the Tenant on April 4, 2018. The Landlord received a partial payment of \$1065.00 on April 8, 2018 and issued the Tenant a receipt and noted \$98.00 was missing.

Agent MA stated that the Landlord did not receive the rent on May 1, 2018 and that another employee from Eviction Services contacted the Tenant by phone on May 22, 2018 and advised him that he could pay the rent by sending the rent by mail to their post office box. Agent MA stated that they did not receive rent for May, June or July 2018.

Landlord PB stated that he was seeking an Order of Possession and a Monetary Order for the unpaid rent.

#### Tenant Evidence:

The Tenant testified that he paid rent in cash for the last five years; however, for the last two years, Landlord PB has been "playing games" and making himself unavailable to accept the Tenant's rent. The Tenant provided a history of text messages between himself and Landlord PB where he would make arrangements to drop off the rent to Landlord PB at various times and locations. In April 2018, after receiving the Notice, the Tenant made arrangements to drop off the rent to Landlord PB; however, was \$98.00

short. The Tenant stated that he had made a mistake and referred to the following conversation he had with Landlord PB that that he also submitted as documentary evidence:

"In April 2018, I went to pay (Landlord PB), but made a minor miscalculation, and upon arriving, noted that I was \$100 short on the rent. I asked him if I should come back and pay him that same evening, or the following weekend, or just roll it into the next month's rent. He responded with "Okay".

To clarify, I asked him "You want me to come back in an hour with the last hundred?"

He said "Not tonight."

Again, I attempted to clarify, "So I have to work this week, and if I can't give you the rest of the money today, it won't be until the next weekend, or do you want me to not bother you and just give it to you with next month's rent?"

He maintained his elusiveness again saying only "Okay".

I am now being evicted over \$100 (one hundred dollars) that I have been attempting to make arrangements to pay, that (Landlord PB) has refused."

(Reproduced as written)

The Tenant testified that he texted Landlord PB on May 1, 2018 to pay him May's rent and the previous \$98.00 from April 2018. The Tenant stated that Landlord PB called him back, yelled at him to get out of the rental unit, and told him that he was evicted.

The Tenant stated that he made attempts to contact the owner of the rental unit numerous times and left messages without any return calls. The Tenant acknowledged that a person identifying themselves as a "bailiff", called him and instructed him to mail his rent to a post office box and promised a receipt would be issued. The Tenant did not know or trust this person and did not forward his rent to the post office box address.

The Tenant stated that he has the money for the outstanding rent, is willing to get it to the Landlord today and will make arrangements to pay any future rent by cheque or money order on the first of the month.

### Analysis

Section 46 of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice. The Tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the

notice has no effect. I accept the undisputed testimony of the Landlord that the Tenant made a partial payment of his rent, in the amount of \$1,065.00 on April 8, 2018, four days after receiving the Notice.

The Tenant testified that he was willing to pay the balance of the rent on April 8, 2018, in accordance with the demands of the Notice; however, did not receive cooperation or direction from the Landlord to do so. The Landlord did not testify or present evidence to dispute these assertions.

As the status of this tenancy rests on whether the Tenant was prepared to pay \$98.00, the balance of his April 2018 rent, before April 9, 2018, I consider the following: I have heard undisputed testimony that the Tenant was willing to meet with the Landlord PB to pay the balance of the rent on April 8, 2018; that without the Landlord's cooperation, the Tenant would be unable to pay the rent (under the established protocol); and, that the Landlord was verbally abusive and refused to meet with the Tenant on May 1, 2018 to accept any rent payments.

Based on the undisputed testimony and evidence above, I find it probable that the Tenant was able to and attempted to pay the full amount of his April 2018 rent according to the Notice. As a result, I find that the Notice is cancelled and that the tenancy shall continue until ended in accordance with the Act.

During the hearing, it became clear that the current arrangement with the Tenant paying cash directly to Landlord PB was causing conflict and delaying payment. All parties agreed on an address that the Tenant would send his outstanding rent and any future rent payments by the first of the month, if the tenancy continued. As a result of my finding that the tenancy will continue and in regard to the above agreement between the Landlord and the Tenant, I order the Tenant to pay his rent by cheque or money order by the first of each month starting on August 1, 2018.

The Landlord testified and the Tenant acknowledged that there is a balance of \$3,587.00 in unpaid rent outstanding. The Tenant agreed to immediately send a cheque or money order to the Landlord to the established address. Regardless, the Landlord has established a monetary claim and I find that the Landlord should receive a Monetary Order for the unpaid rent in the amount of \$3,587.00. If the Landlord has received the balance of April 2018 rent, May, June and July 2018 rent from the Tenant by the time they receive the Monetary Order, the Monetary Order will be satisfied.

I would caution the Tenant that, should he fail to pay the outstanding rent, the Landlord would be within their rights to issue a new 10-Day Notice to End Tenancy.

The Landlord was partially successful in their Application and I find that they should not be reimbursed for the Filing Fee.

### Conclusion

I find that the Notice should be cancelled as the Tenant paid the bulk of his rent and attempted to pay the balance within the time limits of the Notice and in accordance with Section 46(4) of the Act.

The Landlord has established a monetary claim for unpaid rent and I grant the Landlord a Monetary Order in the amount of \$3,587.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I order the Tenant to pay his rent by cheque or money order by the first of each month starting on August 1, 2018.

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: July 06, 2018

---

Residential Tenancy Branch