



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *CNR, ERP, OLC, LRE, FF*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a ten day notice to end tenancy for nonpayment of rent. The tenant also applied for the recovery of the filing fee, for an order restricting the landlord's right to enter the rental unit and for an order directing the landlord to carry out repairs and comply with the *Act*,

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent attended and acted as an interpreter.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of the other party's evidence. I find that the parties were served with each other's materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the landlord negligent with regard to maintenance of the rental unit? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy began on February 15, 2018. The monthly rent is \$2,200.00 per month, due on the first of each month. The parties agreed that the tenant paid rent for half of February and the whole month of March together on March 01, 2018. The tenant stated that she made payment to landlord BSG but did not receive a rent receipt.

The landlord testified that the parties communicated by email and text message. The tenant agreed that she did not pay rent on April 01, 2018 but added that after receiving a text message threatening eviction, she paid rent for April on April 03, 2018 to the landlord that she dealt with at the start of tenancy – BSG. The tenant stated that she paid rent in person at the rental unit. The tenant testified that she did not get a receipt.

The landlord stated that he called the tenant on April 01, 2018 and she requested more time to pay rent and promised to pay April's rent along with rent for May 2018. The landlord testified that he agreed to provide the tenant with more time and therefore rent was not paid on April 03, 2018 as testified by the tenant.

The landlord agreed that on May 01, 2018 the tenant paid rent in the amount of \$2,000.00 and promised to pay the balance later. The landlord provided the tenant with a receipt for \$2,000.00. Both parties agreed that the tenant paid \$200.00 later. The tenant testified that when she paid rent on May 01, 2018, she did not recognize the landlord as it was the other landlord – DS, who she had not yet dealt with. She stated that since she did not recognize him, she asked for a receipt and was given one.

The landlord testified that he had given the tenant additional time to pay rent for April and she had promised to pay rent for both April and May on May 01, 2018. The landlord agreed that the tenant paid rent for May in two installments of \$2,000.00 and \$200.00 but stated that the tenant did not pay rent for April as promised by her and as of the date of this hearing the tenant still owed rent for April. On May 08, 2018, the landlord served the tenant with a notice to end tenancy for \$2,200.00 in unpaid rent. The tenant disputed the notice in a timely manner.

The parties provided contradictory testimony with regard to rent for June and July 2018. The tenant stated that she had paid all rent owed but was refused rent receipts. The tenant stated that she had initially dealt with landlord BSG but in May 2018 she did not recognize the other landlord DS and therefore asked for a receipt. The tenant further added that she paid rent for the months of June and July 2018 to someone other than BSG and DS who she did not recognize and her requests for rent receipts were turned down.

The landlord testified that as of the date of this hearing the tenant owed rent for April, June and July 2018. The tenant denied owing rent and stated that all rent was paid.

The tenant testified that the landlord visited the rental unit without providing 24 hour notice and that there were several items in the rental unit that required repair. The items listed were an inoperative washer and dryer, faulty electrical wiring, broken fire alarm and a hole in the ceiling.

**Analysis:**

Based on the sworn testimony of the both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on May 08, 2018. Even though the tenant testified that all rent was paid, she was unable to provide any additional evidence to support her testimony and the landlord denied having received rent for April, June and July 2018.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant testified that she was all caught up on rent while the landlord stated that the tenant owed rent for the months of April, June and July 2018. I have now to determine whether rent is owed or not and I will do so based on a balance of probabilities, the documents filed into evidence and the testimony of both parties.

Based on the testimony of the tenant, I find that she requested a receipt from the landlord in May because she did not recognize him and that the landlord provided her with one. The tenant further added that she did not recognize the person she paid rent to for June and July and was denied a rent receipt. Based on the tenant's own testimony, I find that the tenant had already disputed a notice to end tenancy for non-payment of rent by making an application for dispute resolution on May 10, 2018 and therefore should have paid rent for subsequent months by a method that provided her with evidence of payment.

I find that the landlord provided a receipt for rent paid in May and therefore would have no reason to deny the tenant a receipt for rent paid for subsequent months, if rent was paid. I found the landlord's testimony to be credible and accordingly I find on a balance of probabilities that it is more likely than not that the tenant did not pay rent for April, June and July 2018 and as of the date of this hearing still owes rent. Accordingly, I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order.

The tenant must be served with the 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.

Since the tenancy is ending, the tenant's application for an order directing the landlord to carry out repairs and comply with the *Act* is moot. The tenant has failed to prove her case and must therefore bear the cost of filing this application.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant.

The tenant's application is dismissed in its entirety.

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

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Residential Tenancy Branch