

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNR, OPR, MNR, MNSD, FF

## Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties were represented at the hearing and had opportunity to be heard.

## Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Is the landlord entitled to a monetary order as requested?

## Background and Evidence

The parties agreed that the tenancy began in February 2009. The tenants are obligated to pay \$1,100.00 per month in rent. The landlord holds a \$550.00 security deposit. The landlord testified that the tenants failed to pay rent in the months of April – June inclusive. On May 12 the landlord served the tenants with a 10-day notice to end tenancy for unpaid rent.

M.B., who represented both tenants at the hearing, testified that she paid rent in full in the month of April by paying the landlord cash. M.B. testified that the landlord did not give her a receipt. M.B. and her son, T.L., further testified that in mid-April the landlord told them that he would be selling the rental unit, that they must vacate the unit at the end of May and that they could live in the unit rent-free in the month of May. The landlord denied having made such statements and provided a recent land title search showing that he is still the owner of the rental unit. The tenants acknowledged that they did not pay rent in the months of May and June.

## Analysis

When a landlord alleges that a tenant has not paid rent, the tenant bears the burden of proving that rent has been paid. I find that the tenants have not met this burden. Even if the landlord had not provided the tenant with a receipt, the tenants did not provide any other documentation, such as bank records, to show that they had withdrawn \$1,100.00 in cash. I further find that the tenants have not proven that the landlord verbally agreed to allow them to live rent-free in the month of May. In the absence the confirmation of the landlord that he did indeed make such a statement and in the further absence of written documentation confirming the promise, I find that the tenants were obligated to pay rent in the month of May. I further find that the tenants were obligated to pay rent in the month of June and failed to do so.

I find that the landlord has established grounds to end this tenancy and I grant the landlord an order of possession. The tenants' application to set aside the notice to end tenancy is dismissed. The tenants must be served with the order of possession. Should the tenants 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.

As for the monetary order, I find that the landlord has established a claim for \$3,350.00 which represents unpaid rent for the months of April – June inclusive and the \$50.00 filing fee the landlord paid to bring his application. I order that the landlord retain the deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$2,800.00. The tenants' application is dismissed.

Dated June 22, 2009.