



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE/MAX MID ISLAND REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      cnr, opr, mnr

### Introduction

The male tenant applies for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities).

The landlord applies for dispute resolution as against both tenants, and requests an Order of Possession, and a Monetary Order for unpaid rent for January and loss of rental income for February. Although filed late, the tenants agree that this matter be heard at the same time as their claim.

### Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenants on January 15, 2105, effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenants to the landlord?

### Background and Evidence

This tenancy began on November 28, 2014. Monthly rent of \$1,200.00 is due on before the 1<sup>st</sup> day of each month, although the landlord agreed to accept rent a few days late, provided the tenants remained in contact as to such late payment. A security deposit of \$600.00 was paid, and a pet damage deposit of \$600.00 was paid prior to the start of the tenancy. Rent for the first month was paid late. After several assurances, and then excuses as to delay, the rent was paid December 9, 2014. The tenants promised at that time to bring in post-dated cheques. The rent for January was not paid on the 1<sup>st</sup>. On January 5, the tenant promised to pay the following day, but failed to do so. On January 8, a further promise to pay was made, but then the tenant advised he was in Nanaimo. The landlord’s assistant suggested a possibility the rent could be left in the drop box, through the landlord’s office door.

The male tenant’s evidence is that he dropped an unmarked envelope with \$900.00 cash through the landlord’s mail slot on the night of January 8. His cousin witnessed

this, as did a friend (who attended the hearing). After the landlord indicated no rent had been received, the landlord refused to accept any further rental payment.

The landlord testified that no such payment was ever received. The landlord submits it does not stand to reason that the tenant would place an unmarked envelope through the door that did not even reference who it was from, or what it was for. The landlord notes that they have no policy that allows cash to be deposited through the door, and it is not reasonable that the tenant would put cash through the door, especially given his earlier promise to provide post-dated cheques. The landlord further testified that the following day, the tenant advised that his male friend (who attended the hearing) was his cousin and had witnessed the cash being put through the door. At the hearing, this friend was not referred to as a cousin, but only a friend. The landlord requested that the tenant provide evidence of a withdrawal from the tenant's account, but the tenant refused. The landlord testified that it was not true that a payment of further rent was refused by the landlord, but rather advised the tenant that any payment would be good.

### Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement. While the landlord may have consented to accept rent later by a few days, that does not eliminate the contractual term that rent was payable on or before the first day of each month. No consideration was given by the landlord to the tenants for late rent payments, and I consider the promise to be a unilateral agreement not to evict, should rent arrive with a few days of the due date.

I find the testimony of the landlord's representative to be entirely credible. Her testimony was clear and detailed, and corresponded with documentary evidence. I sensed no intention to deceive, and in one circumstance when a question as to the date of her application was raised, she was quick to acknowledge an error in dates. I accept that she has significant experience in property management, and had no reason to be untruthful at this hearing.

While accepting the landlord's truthfulness fully, I find that the credibility of the tenant is suspect, as to the issue of the rental payment through the door. This is supported by a number of factors. The tenant has a demonstrated history of not keeping his word. Evidence of text messages exchanged between the parties confirms that the tenant repeatedly made assurances about the payment of rent, but failed to adhere to these assurances. The tenant also promised to provide post dated cheques, but did not do so. The tenant told the landlord that his friend (who attended the hearing) was his cousin, but provided differing testimony in stating a different person also witnessed the drop, and this person was his cousin. Finally, it is simply not believable that the tenant would

actually put cash into an unmarked envelope, and leave it in a drop box, as claimed by the tenant. In short, I do not find the testimony that \$900 cash was put through the door to be plausible or credible. I find rather, that no rent for January has been paid to the landlord by the tenants.

The 10 day notice specifically advised the tenant to pay the rent in 5 days, or the tenancy would end in 10 days. I do not accept that the landlord refused to accept any further payment of rent during this 5 day period, or at all. I find rather, that no further rent was paid, and that no further legitimate effort to pay rent occurred. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the notice is dismissed.

No rent has been received by the landlord for January or for February. Assuming that the Order of Possession, effective within 48 hours, is served and complied with, the earliest date the landlord will be able to place a new tenant is by mid-February. I accept that this loss, at least, will be suffered by the landlord. I award the sum of \$\$600.00 for loss of rental income for February, with liberty to re-apply for any further loss, once same can be quantified.

### Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$1,800.00, representing the January rental arrears (\$1,200.00) and the loss of rent for half of February (\$600.00). This sum must be paid by the tenants to the landlord immediately.

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: February 05, 2015

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Residential Tenancy Branch

