



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD, FF (Landlords' Application)  
CNR, MT (Tenant's Application)

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on December 11, 2015 and by the Landlords on January 12, 2016.

The Landlords applied for: an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for unpaid rent and for more time to cancel the notice to end tenancy.

Both Landlords and the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained and the parties had no questions about the proceedings. Both parties were given a full opportunity to present evidence they had submitted pursuant to the Residential Tenancy Branch Rules of Procedure, make submissions to me, and to cross examine the other party on the evidence provided. The parties confirmed receipt of each other's Application which was served pursuant to the *Residential Tenancy Act* (the "Act").

### **Preliminary Issues**

At the start of the hearing, the Tenant confirmed that she had vacated the rental unit and the tenancy had ended. The Landlords confirmed that the Tenant had vacated the rental unit but they had not had the return of their keys and therefore still requested an Order of Possession for the rental unit. The Tenant consented to the Landlords being issued with an Order of Possession for the rental unit.

Based on the foregoing, I issue the Landlords with an Order of Possession which is effective two days after service on the Tenant. The Landlords may enforce the order in the Supreme Court of British Columbia as an order of that court. Accordingly, I dismiss the Tenant's Application as the canceling of the notice to end tenancy is now a moot issue.

The Landlords confirmed that their monetary claim included a request for the Tenant to pay the security deposit as it was not paid when it was requested of the Tenant at the start of the tenancy. However, as the tenancy has now ended, I am unable to award the Landlords a security deposit after the fact, as these would have been funds held in trust by the Landlords to be used against any money owed to the Landlord at the end of the tenancy. Therefore, I amended the Landlords' Application to remove the request to keep the Tenant's security deposit and reduced the monetary claim amount requested from \$5,100.00 to \$4,200.00. I did this pursuant to my authority under Section 64(3) (c) of the Act.

#### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Has the Tenant provided sufficient evidence that she paid partial rent?

#### Background and Evidence

The parties confirmed that this verbal tenancy started on November 15, 2015 on a month to month basis. Rent in the amount of \$1,700.00 was payable by the Tenant on the first day of each month. The Tenant was requested to pay a security deposit but none was paid during the tenancy.

The female Landlord testified that the Tenant failed to pay \$800.00 for the prorated amount of rent for November 2015 as well as the requested security deposit. The Tenant also failed to pay rent of \$1,700.00 for December 2015.

As a result, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 8, 2015. The Notice was provided into evidence and shows an amount of "800.00 And \$1,700.00" due on December 1, 2015. The female Landlord testified that the Tenant also failed to pay January 2016 rent. Therefore, they seek a total amount of \$4,200.00 in rental arrears from the Tenant.

The Tenant confirmed receipt of the Notice on December 8, 2015 on her Application. The Tenant acknowledged that she had not paid the prorated amount of November 2015 rent and not paid any rent for January 2016. However, she did provide the male Landlord \$1,000.00 in cash on December 12, 2015 leaving an outstanding balance of \$700.00 for December 2015 rent.

The male Landlord disputed the Tenant's testimony stating that he had not received any money from the Tenant. The Tenant stated that she handed the money to the male Landlord. When the Tenant was asked whether she had any supporting evidence of this payment being made, such as a rent receipt, she confirmed that she did not have a rent receipt. The Tenant stated that she could get witnesses to provide an affidavit to confirm that she had made the payment to the Landlord. However, no such affidavits were provided before me prior to the hearing.

### Analysis

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement as agreed to by the parties in this hearing, are recognized and enforceable under the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has a right to deduct all or a portion of the rent. The Tenant was in agreement that she owed the Landlords \$3,200.00 in unpaid rent but that she had paid \$1,000.00 in cash to the male Landlord on December 12, 2015. However, the male Landlord disputed this.

In this case, I find the Landlord had served the Tenant with the Notice and their Application clearly informed the Tenant and put her on notice of a monetary claim being made against her which included rent for December 2015. Therefore, it would have been reasonable to expect that the Tenant would have provided corroborating evidence prior to this hearing to dispute this, which the Tenant did not do. A party relying on evidence for a hearing must be submitted prior to the hearing taking place in accordance with the Rules of Procedure. Therefore, I am only able to conclude based on the evidence before me that the Tenant failed to provide sufficient evidence to show that she had made this partial payment of rent to the male Landlord on December 12, 2015.

As a result, I award the Landlords the total amount of the rental arrears claimed in the amount of \$4,200.00. As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the \$100.00 filing fee for the cost

of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$4,300.00**.

The Landlords are issued with a Monetary Order for this amount. Copies of this order are attached to the Landlords' copy of this decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

### Conclusion

The Landlords are granted an Order of Possession. The Tenant has breached the Act by not paying rent. Therefore, the Landlords are issued with a Monetary Order for unpaid rent in the amount of \$4,300.00.

The Tenant's Application is dismissed without leave to re-apply.

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 02, 2016

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Residential Tenancy Branch

