



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This was an application by the landlord for an order for possession, a monetary order and an order to retain the tenant's security deposit in partial satisfaction of the monetary claim. the hearing was conducted by conference call. The three named representatives of the landlord attended the hearing and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order for possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and if so in what amount?

### Background and Evidence

The rental unit is an apartment in Chilliwack. The tenancy began on December 6, 2010 for a fixed term ending June 30, 2011. Monthly rent in the amount of \$750.00 is payable on the first of each month. As an inducement to rent the landlord offered a half month's free rent for the first month of the tenancy to new tenants. The landlord's representative testified that the landlord charged the tenant net rent for December in the amount of \$629.00 plus a security deposit of \$375.00, but the landlord gave the tenant a credit of half a month's rent for December so that the net amount to be paid by the tenant including the security deposit at the commencement of the tenancy was the sum of \$629.00. the landlord's representative, R.C. testified that on December 6<sup>th</sup> the tenant gave the landlord a cheque from the Ministry of Employment and Income Assistance in the amount of \$187.50. The tenant paid the landlord the further sum of \$511.45 in cash for a total of \$698.95. J.C. testified that she gave the tenant a receipt in the amount of the \$698.95 payment. \$629.00 of the payment was applied to December rent and the security deposit and the balance of \$69.95 was applied towards January rent. The tenants did not pay rent for January and on January 4, 2011 the landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit. The Notice claimed that the tenants failed to pay rent in the amount of

\$705.00 that was due on January 1, 2011. The landlord calculated the amount based on the monthly rent of \$750.00 less the \$69.95 credit on the tenant's account plus a \$25.00 late fee. After posting the Notice the landlord received a payment of \$375.00 from the Ministry of Employment and Income Assistance on the tenant's behalf, leaving a balance outstanding for January of \$330.05. The landlord testified that the tenants have failed to pay the outstanding rent and have not applied to dispute the Notice to End Tenancy.

At the hearing the tenant claimed that she has overpaid rent to the landlord. She claimed to have receipts from the landlord for additional cash amounts that she paid to the landlord on December 6, 2010, but she did not produce any of the claimed documents. The tenant referred me to an application that she said was her application to dispute the Notice to End Tenancy. I stood down the hearing to obtain the tenant's file which is set for hearing by conference call on February 4, 2011 at 11:00 A.M. There were no documents in the file to support the tenant's claim that she paid any amounts to the landlord beyond the amounts that the landlord's representative testified that she received from the tenant. In her application set for February 4, 2011 the tenant has claimed payment of the sum of \$24,637.50 from the landlord, said to be for Trauma – theft – illegal entry and withholding mail.

#### Analysis and conclusion

Although the tenant claimed that she paid rent for January by way of an overpayment that she made in December, she provided no documentary evidence to support her position. Her testimony about her dealings with and payments made to the landlord was a disconnected and rambling tale that made little sense. The landlord's testimony was clear and buttressed by supporting documents that confirmed the oral testimony from the landlord's representatives. Upon the evidence and documents presented I find that the landlord has shown that the tenant failed to pay rent for January in the amount of \$305.00. The landlord claimed a late fee of \$25.00 for a total claim of \$330.00, but I do not allow the late fee claimed by the landlord; the contractual provision for late fees is contrary to the provisions of the *Residential Tenancy Act* and Regulation because it provides for late fees that may exceed the maximum amount of \$25.00 allowed to a maximum of \$100.00. I find that the landlord's contractual provision for late fees is void and unenforceable because it contravenes the provisions of the *Residential Tenancy Act*.

I deny the tenant's application to cancel the Notice to End Tenancy for unpaid rent and I find on the evidence presented that the landlord is entitled to an order for possession

effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

I allow the landlord's claim for unpaid rent for January in the amount of \$305.00. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$355.00. I order that the landlord retain the said sum from the \$375.00 deposit that it holds. The tenant has not paid rent for February and I order that the landlord retain the remainder of the deposit on account of a continuing loss of revenue.

The tenant's application for a monetary order will proceed as scheduled on February 4, 2011.

Dated: February 01, 2011.

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