



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order for loss or compensation under the Act. The Tenant vacated the rental unit on June 30, 2009, and is seeking cleaning and moving costs from when she vacated the subject rental unit, the equivalent of two years of rent she has paid at her new rental unit, and for stress and mental health, for a total claim of \$25,000.00.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to make a claim?

### Background and Evidence

The tenancy began on February 15, 2003. The Tenant vacated the rental unit on June 30, 2009.

The Landlords testified and submitted evidence that they served the Tenant with a 10 day Notice to End Tenancy for unpaid rent on June 4, 2009.

The Landlords' evidence and testimony indicates that the rent owed was paid after the five day period provided in the Notice to End Tenancy.

The Tenant testified she was served with the Notice as stated by the Landlords and although she had the rent money she did not pay it within the required five days.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I dismiss the Application of the Tenant. I find the Tenant has filed her Application out of time and is barred under the Act from making a claim against these Landlords.

Under section 60 of the Act, an Application must be made within two years of the date that the tenancy ended.

In British Columbia a tenancy may only end if it ends in accordance with the Act.

The Landlords confirmed they served the Tenant with the Notice on June 4, 2009, and the Tenant did not dispute this. Therefore, the effective date of the Notice was June 14, 2009. The Tenant testified she had the rent but did not pay it until later in the month. The evidence of the Landlords is that they accepted this late payment for use and occupancy only and did not reinstate the tenancy.

I find that the tenancy ended on June 14, 2009, as it was the effective date of the Notice, since the Tenant did not pay her rent nor did she file an Application to dispute the 10 day Notice for unpaid rent, within five days of service of the Notice. Pursuant to section 46 of the Act, the Tenant is also conclusively presumed to have accepted the tenancy ended on the effective date of the Notice, June 14, 2009.

As the Tenant did not file her claim until June 30, 2011, she filed her Application outside of two years from the date the tenancy ended. I order her claims are dismissed without leave to reapply.

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: October 03, 2011.

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Residential Tenancy Branch