



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession, a monetary order for unpaid rent and to recover the filing fee for the Application.

The landlord's agents, witnesses and the tenant and his legal counseled appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

The landlord confirmed that the tenant had vacated the rental unit and an order of possession was no longer sought. As a result, I have excluded that request for purposes of this Decision.

### Issue(s) to be Decided

Has the landlord established an entitlement to a monetary order for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the Residential Tenancy Act (the "Act")?

### Background and Evidence

This one year, fixed term tenancy started on September 1, 2011, was to end on August 31, 2012, and it actually ended on October 18, 2011, according to the landlord. The monthly rent was \$5,900.00 and the tenant paid a security deposit of \$2,950.00 at the beginning of the tenancy.

The tenant testified that the actual possession date for the rental unit was August 25, 2011, and that he vacated the rental unit on October 8, 2011, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on October 4, 2011, by registered mail. The Notice stated the amount of unpaid rent as of October 1, 2011, was \$5,900.00. The effective vacancy date was October 14, 2011. Section 90 of the Act states that documents delivered by registered mail are deemed served 5 days later. Therefore the effective vacancy date is automatically corrected to October 19, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlords' total monetary claim has been amended from \$5,900.00 to \$13,100.00, which includes unpaid rent of \$5,900.00 for October and \$5,900.00 for loss of revenue for November 2011, and beyond as the rental unit has remained vacant through the date of the hearing.

The landlord testified that the tenant had raised some issues about the state of the rental unit, but the issues were addressed and corrected.

Upon query, the landlord submitted the rental unit was immediately placed back on the market to re-rent, for the same price listed in the tenancy agreement, but remains vacant. I note the landlord did not submit evidence of advertisements for the rental unit.

The landlord's relevant evidence included a copy of the Notice, the tenancy agreement, photos of the rental unit and the condition inspection report.

In response, the tenant's legal counsel asserted that the tenant owed for only 8 days of rent for October, when he vacated, and not the balance, based upon the landlord's alleged fundamental breach of the Act and tenancy agreement in not providing services required by law.

The tenant did not deny that rent was unpaid on October 1, 2011, but contended that the state of the rental unit made continued living in the rental unit impossible.

The tenant submitted that he made numerous attempts to have the landlord make repairs and remediate the property according to the standards required under the Act and tenancy agreement, with no success.

The tenant submitted that he elected not to pay rent for October as the repairs had not been made, despite the numerous requests.

The tenant's relevant evidence included a significant amount of email transmissions between the parties and photos of the rental unit.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

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.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlords in this case, have the **burden of proving** their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under section 26 of the *Act*, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. I find the tenant has not submitted evidence that he had a legal right to withhold rent.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant did not dispute the Notice within five days nor was he able to show that he did not owe the landlord rent or had some other legal right to withhold rent.

Therefore, as the tenant acknowledged not paying rent for October, I find that the landlords have established a monetary claim of **\$5,900.00** comprised of unpaid rent for October 2011.

As to the landlords' claim for loss of revenue for November 2011, I find the landlords have failed to meet their burden of proof. In reaching this conclusion, I find the landlord failed to take reasonable measures to mitigate their loss. I find a reasonable measure to include advertising the rental unit for less monthly rent than listed in the tenancy

agreement in an attempt re-rent more quickly. I therefore **dismiss** their claim for loss of revenue for November 2011, for **\$5,900.00** and for future months.

Even had I not found that the landlords failed to take reasonable measures to mitigate their loss, I would still have dismissed their claim for November 2011, rent and beyond for their failure to submit proof that the rental unit had been advertised.

I find the landlords' application had merit and I grant them recovery of the filing fee, in the amount of \$50.00.

I find the landlords have established a total **monetary claim** in the amount of **5,950.00**, comprised of unpaid rent for October 2011, for \$5,900.00, and the filing fee of \$50.00.

### Conclusion

I grant the landlords a monetary order in the amount of **\$5,950.00**.

I am enclosing a Monetary Order for \$5,950.00 with the landlords' Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this Monetary Order.

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: November 14, 2011.

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Residential Tenancy Branch