



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes For the tenant-CNR, FF  
For the landlord-OPR, MNR, FF

### Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee.

The landlord applied for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

The tenants and their witness and the landlord and her witness appeared at the hearing. The hearing process was explained to the parties. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other 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

Are the tenants entitled to an order cancelling the Notice to End Tenancy and to recover the filing fee?

Have the tenants breached the *Residential Tenancy Act* or tenancy agreement, entitling the landlord to an order of possession, a monetary order for unpaid rent and to recover the filing fee?

### Background and Evidence

The tenant stated that the tenancy began on July 1, 2011, during which his brother, his witness, lived with the tenants. On or about November 1, 2011, the brother moved to an adjoining basement suite. The original security deposit was transferred to the brother's rental unit; therefore there was no security deposit for the tenants is being held by the landlord.

There is no written, signed tenancy agreement; however the parties agree the monthly rent is \$750.00.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated the tenant was delivered a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), through the tenant's brother on November 7, 2011, listing an amount of \$750.00 as unpaid rent as of November 1, 2011. The effective move out date was November 16, 2011. The tenant disputed that he received the Notice; however his application was a request to cancel the Notice. I accept the tenant received the Notice as stated by the landlord.

The landlord submitted that she has not been paid rent for the month of November and that she is seeking an order of possession based upon that non-payment and a monetary order for \$1,500.00, which includes lost revenue for the month of December, 2011.

In response, the tenant claimed the landlord agreed to give him time to pay the November rent due to a robbery in his rental unit on or about October 29, 2011. Additionally the tenant claimed that he eventually paid \$200.00 of the rent owed, and had a balance of \$25.00 from an overpayment of rent from a previous month.

As to the balance, the tenant stated he did not have money to pay the remaining rent as the landlord had not paid him for work done around the premises. Upon query, the tenant acknowledged that the balance of rent, apart from the payment of \$225.00 he stated he paid, remained unpaid. The tenant claimed he never received receipts from the landlord for rent paid by him.

The landlord responded by saying that the tenant had been paid in full for all work done and that she did not owe him any money.

Upon query, the landlord acknowledged that there was a record of the tenant's payments, but that she had not produced it.

I did not hear from the landlord's witness, her accountant, a definite answer as to whether or not the \$200.00 payment was made by the tenant in November, only that he did not see a receipt for the same.

The landlord stated that she did not issue a receipt as there was no money paid.

### Analysis

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

### **Landlord's Application:**

Where tenants fail to pay rent when due, the landlord may serve tenants with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, tenants must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that he does not owe to rent to the landlord or had some other legal right to withhold rent.

Upon hearing from the parties, along with the tenant's confirmation, I am satisfied that the tenant owed the landlord rent when the Notice was issued, that he did not pay the outstanding rent to the landlord within five days of receiving the Notice and the tenant did not establish that he had the legal right to withhold the rent owed.

I therefore find that the landlord is entitled to an order of possession effective **two days** after service on the tenants.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenants fail to comply with this order of possession.

As to the amount of past due rent, the landlord provided no documentary evidence of any payment made by the tenant during the course of the tenancy. The tenant testified that he paid \$200.00 cash toward the November rent, and the landlord disputed this payment. The tenant's brother testified that he observed the tenant with a large sum of cash heading toward the landlord's home, with the tenant stating he was paying this for rent. Therefore upon a balance of probabilities and due to the lack of evidence submitted by the landlord, I find that the tenant made a \$200.00 payment of rent, leaving the tenant owing rent for the month of November in the amount of \$550.00.

I therefore find that the landlord has established a monetary claim for **\$550.00** for unpaid rent for November 2011.

I find the landlord's application had merit and I therefore allow the landlord recovery of the filing fee.

I **grant** the landlord a monetary order under section 67 of the Act for **\$600.00**, comprised of unpaid rent of \$550.00 and the filing fee of \$50.00.

I am enclosing a Monetary Order for \$600.00 with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this Monetary Order.

I **dismiss**, with **leave to reapply**, the landlord's claim for loss of revenue of \$750.00 for December 2011, as the landlord had yet to suffer a loss as of the day of the hearing.

**Tenant's application:**

Due to the above, the tenants' Application for Dispute Resolution seeking a cancellation of the Notice is **dismissed without leave to reapply** as the Notice to End Tenancy issued is valid and enforceable.

As I have dismissed the tenants' application, I decline to award them the filing fee.

Conclusion

The landlord is granted an order of possession and a monetary order in the amount of \$600.00

The tenant's application is 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: November 30, 2011.

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Residential Tenancy Branch