



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the Tenant vacated the rental unit at the end of November.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on November 23, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch on November 15, 2012, copies of which were served to the Tenant on November 23, 2012 with the Application for Dispute Resolution. As this evidence was served to the Tenant in accordance with the *Act*, it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on December 03, 2012, copies of which were mailed to the Tenant at the rental unit on December 03, 2012. As the Tenant was not living at the rental unit on December 03, 2012, I find that this evidence was not served to the Tenant in accordance with the *Act*, and it was not accepted as evidence for these proceedings. The Agent for the Landlord was not permitted to provide evidence regarding damage to the rental unit, as the Landlord has not properly informed the Tenant that the Landlord is seeking compensation for damage to the rental unit.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on August 15, 2008; that during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$915.00 by the first day of each month; and that the Tenant paid a security deposit of \$375.00 on August 13, 2008.

The Agent for the Landlord stated that the Tenant did not pay any rent for November of 2012, for which the Landlord is seeking \$915.00. The Agent for the Landlord stated that the Landlord is only seeking compensation for unpaid rent from November.

The Landlord is seeking a late fee of \$25.00 because rent for November of 2012 was not paid when it is due. The Landlord did not submit a copy of the tenancy agreement as evidence.

### Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$915.00 by the first day of each month and that the Tenant did not pay rent for November of 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$915.00 in outstanding rent to the Landlord for November of 2012.

No documentary evidence was submitted to show that the Tenant agreed to a fee for a late payment of rent, as is required by section 7 of the *Residential Tenancy Regulation*. As the Landlord has not established that the tenancy agreement required the Tenant to pay a fee for late payment of rent, I dismiss the Landlord's application for a late payment fee.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$965.00, which is comprised of \$915.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$377.17, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$587.83. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 19, 2012.

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Residential Tenancy Branch