



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNDC  
                              CNR RP FF

### Preliminary Issues

During the course of this proceeding the Landlord requested that her application be amended to include their claim for January 2013 rent as the Tenant has not paid the outstanding rent and continues to occupy the rental unit. Upon review of this request I find the Landlord was requesting to amend their application for loss of rent for January as the tenancy ended in December in accordance with the 10 Day Notice. Accordingly, I amended the application to include a request for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 64(3) of the Act.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed their application on December 12, 2012 to obtain an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant filed seeking Orders to cancel the Notice to end tenancy for unpaid rent, to have the Landlord make repairs to the unit, site, or property, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant paid the outstanding rent?
2. If not, should the Landlord be granted an Order of Possession?
3. Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 10 Day Notice issued December 1, 2012; and the tenancy agreement.

The Tenant submitted documentary evidence which included, among other things, copies of: a 10 Day Notice issued December 1, 2012.

The Parties confirmed that they entered into a month to month tenancy agreement that began on November 1, 2009. Rent is currently payable on the last day of each month in the amount of \$1,154.00 and on October 21, 2009 the Tenant paid \$532.00 as the security deposit.

The parties confirmed that the Tenant has not paid December 2012 rent or January 2013 rent and he is still occupying the unit. The Tenant requested permission to stay in the unit until January 20, 2013. The Landlord requested an Order of Possession for as soon as possible and a Monetary Order for the two months of outstanding rent.

### Analysis

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

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on December 5, 2012, three days after it was posted to the door, and the effective date of the Notice is **December 15, 2012.**

The Tenant disputed the Notice however confirmed that he has not paid the rent due in breach of section 26 of the Act. Based on the foregoing I find the tenancy ended on the effective date of the Notice, **December 15, 2012**, and therefore the Tenant must vacate the rental unit to which the notice relates pursuant to section 46 of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,154.00 that was due November 30, 2012, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord December rent that was due November 30, 2012 in the amount of **\$1,154.00**.

As noted above this tenancy ended **December 15, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for January 2013.

The Tenant continues to occupy the rental unit therefore the Landlord will not regain possession of the unit until after service of the Order of Possession and will have to attempt to re-rent the unit. Therefore I find the Landlord is entitled to payment for use and occupancy and loss of rent for the entire month of January, 2013, in the amount of **\$1,154.00**.

### **Tenant's application**

As noted above, I have upheld the 10 Day Notice and awarded the Landlord an Order of Possession. The Tenant's request to cancel the Notice and Order the Landlord to repair the unit is now moot. Accordingly, I dismiss the Tenant's claim.

The Tenant was not successful with his application; therefore he must bear the burden of the cost to file his application.

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,308.00** (\$1,154.00 + \$1,154.00). This Order is legally binding and must be served upon the Tenant. In the

event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

I HEREBY DISMISS the Tenant's application, 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: January 11, 2013

---

Residential Tenancy Branch

