



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, O

### Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent and utilities and the recovery of the filing fee. The Tenant has made an application to cancel a notice to end tenancy issued for unpaid rent.

Both parties attended the hearing and have acknowledged receiving the notice of hearing package submitted by the other party. As such, I am satisfied that both parties have been properly served with the submitted notice of hearing and evidence packages.

During the hearing, the Tenant provided a forwarding mail address for service of this decision. Both files shall be updated to reflect this address for the Tenants.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to an order cancelling the notice to end tenancy?

### Background and Evidence

At the beginning of the hearing the Tenant, D.W. acknowledged that rent was unpaid and that the Tenants were in the process of vacating the rental unit by the end of the day. The Tenant has stated in his direct testimony that he is vacating the rental unit and is disputing the Landlord's claim for \$100.00 for November rent arrears, \$1,400.00 in unpaid rent/lost rental income for February 2013 and \$116.38 for utilities for November to December. The Tenant has conceded the rent arrears for December and January as well as the utilities for the same time period.

It was clarified by both parties that the Landlord has withdrawn the \$100.00 monetary claim for November rent arrears as this was a clerical error on his part. The Landlords have disputed that the Tenant paid the \$116.38 utilities for November 5 to December 5. The Tenant does not have any supporting evidence.

Both parties agreed that the Tenant was served with a 10 day notice to end tenancy issued for unpaid rent and utilities dated January 2, 2013 in person on the same date. The Tenant has acknowledged receiving the notice on this date. The notice states that \$2,900.00 in unpaid rent (November-\$100.00, December-\$1,400.00 and January \$1,400.00) was due on January 1, 2013. The notice also states that \$116.88 in unpaid utilities following a written demand on January 1, 2013 was outstanding. The stated effective date of the notice was January 15, 2013. The Tenant currently still has possession of the rental unit and still possesses the keys. The Landlord states that the Tenant has failed to provide any notice that they were vacating the rental on the date of the hearing.

### Analysis

I find based upon the undisputed testimony of the Landlord as the Tenant has acknowledged rent arrears of \$2,800.00 (\$1,400.00 for December and \$1,400.00 for January), \$300.00 in Utilities (\$150.00 Fortis- December and \$150.00 Fortis- January). The Landlord has established a total monetary claim of \$3,100.00 based upon the direct testimony of the Tenant.

The Tenant disputes the Landlord's claim for \$116.88 in utility charges for November to December which is disputed by the Landlord. The Tenant has failed to provide sufficient evidence to satisfy me on this dispute. I find that the Landlord has established a claim based upon the invoice from Fortis and the 10 day notice to end tenancy issued for unpaid rent and utilities.

The Landlord seeks \$1,400.00 in unpaid rent/lost rental income as the Tenants currently occupy the rental. The Tenant disputes this claim stating that they are in the process of vacating the rental. The Landlord states that the Tenant has failed to communicate and provide any notice to vacate the rental unit and as such prevented the Landlord from mitigating any losses by re-renting the unit. I find that the Landlord has established a monetary claim for lost rental income of \$1,400.00 for February as he has been prevented from any mitigation of February rent.

The Landlord has established a total monetary claim for \$4,616.38. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord is granted a monetary

order for \$4,666.38. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I also find based upon the direct testimony of the Tenant that the Landlord is entitled to an order of possession as the Tenant is still in possession of the rental. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based upon the Tenant's direct testimony that there were rent arrears and that they remain unpaid, the Tenant's Application to cancel a notice to end tenancy is dismissed.

### Conclusion

The Tenant's Application is dismissed.

The Landlord is granted an order of possession and a monetary order for \$4,666.38.

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: February 01, 2013

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Residential Tenancy Branch

