



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 28, 2013, by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities, to keep all or part of the security and or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord's Agent (herein after referred to as Landlord) affirmed that the Tenant was personally served with copies of the Landlords' application for dispute resolution and the Notice of dispute resolution hearing at the rental unit on January 30, 2013 at 8:00 p.m. Based on the submissions of the Landlord I find that the Tenant was sufficiently served notice of this proceeding, in accordance with the Act and I proceeded in the Tenant's absence.

### Issue(s) to be Decided

- 1) Have the Landlords regained possession of the rental unit?
- 2) Are the Landlords entitled to a Monetary Order?

### Background and Evidence

The Landlord advised that the Tenant entered into a written month to month tenancy agreement that began on September 1, 2012. Rent was payable on the first of each month in the amount of \$725.00 and near the end of August 2012 the Tenant paid \$350.00 as the security deposit.

The Landlord stated that when the Tenant failed to pay the January 1, 2013 rent on time she personally served him a 10 Day Notice to end tenancy on January 4, 2013. She saw the Tenant packing and moving his stuff as late as 8:00 p.m. on January 31, 2013. When she attended the unit in the morning of November 1, 2012 there was no answer. At 4:00 p.m. on November 1, 2012 her husband tried the door and found that it was unlocked. When he looked inside he found the place vacant with the keys inside the unit.

The Landlord confirmed that they regained possession of the rental unit; therefore, they are withdrawing their request for an Order of Possession. They are seeking January 1, 2013 unpaid rent plus \$20.16 for the Tenant's January 2013 cable bill. The Landlord stated that they had never provided the Tenant with a copy of the cable bills as he knew the monthly flat rate amount and he would always pay cash for the cable when he paid his rent.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence.

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 Tenants are deemed to have received the 10 Day Notice on November 5, 2012, three days after it was posted to the door, and the effective date of the Notice is November 15, 2012. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **November 15, 2012**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. The Tenant vacated on or before February 1, 2013. The Landlords withdrew their request for an Order of Possession.

The Landlords claimed unpaid rent of \$725.00 plus \$20.16 for the cable utilities that was due January 1, 2013. 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 Landlords the amount of **\$745.16** (\$725.00 + \$20.16).

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

January 2013 Rent + Cable	\$ 745.16
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 795.16</b>
<b>LESS: Security Deposit \$350.00 + Interest 0.00</b>	<b><u>-350.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 445.16</u></b>

Conclusion

The Landlords have been awarded a Monetary Order for **\$445.16**. 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.

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 21, 2013

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Residential Tenancy Branch

