



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MND MNR MNDC FF

### Preliminary Issues

The Landlord filed his original application for dispute resolution on October 15, 2013 and indicated in the details of the dispute that he was seeking compensation for October and November rent; NSF bank charges; utilities; and damages to the statue and outside light. He checked off the boxes on his application to indicate he was seeking a monetary order for damage to the unit and unpaid rent and utilities.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearly indicated his intention of seeking to recover the payment for November rent and bank charges. Therefore I amend the application, pursuant to section 64(3)(c) of the Act.

The Landlord testified that the Tenants vacated the rental unit on November 3, 2013. Therefore, he no longer needs an Order of Possess because he regained possession of the unit on November 4, 2013. He amended his application on November 12, 2013, increasing the amount of damages being claimed. He served this amended application to the Tenants by registered mail to the rental unit address, ten days after the Tenants moved out.

Section 89(1)(c) of the Act stipulates that service of an application for dispute resolution to a tenant, if done by registered mail, must be mailed to the address at which the person resides.

After consideration of the foregoing, I find that service of the amended application was not done in accordance with the Act. Accordingly, I dismiss the amended application, with leave to reapply.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 15, 2013, by the Landlord seeking a Monetary Order for: damage to the unit, site or property;

unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates that each Tenant was served with copies of the Landlord's original application for dispute resolution and Notice of dispute resolution hearing on October 15, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant is deemed served notice of this proceeding on October 20, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord affirmed that the parties entered into a written fixed term tenancy agreement that began on July 15, 2013 and was set to end on July 31, 2014. Rent was payable on the first of each month in the amount of \$1,300.00. The Tenants paid \$650.00 for the partial month of July 2013 and \$650.00 was paid as the security deposit on July 10, 2013.

The Tenants' cheques for August and September rents were returned NSF and each time the Tenants paid the Landlord cash for the rent. Then when the October 1, 2013 cheque was returned NSF the Tenants did not pay the Landlord in cash so he posted a 10 Day Notice on their door on October 3, 2013. The Landlord saw the Tenants vacating the unit on November 3, 2013. He requested that they let him know when they were finished so he could get the keys from them; however, they just left taking the keys with them.

He is seeking to recover October and November rent (2 x \$1,300.00) and utilities of \$90.00 which includes \$45.00 for the gas bill and \$45.00 for cable; \$75.00 in NSF bank charges; \$80.00 for the broken garden statue; and \$50.00 for the broken outside sensor light. He included copies of the returned cheques, utility bills and pictures of broken items in his evidence.

### Analysis

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 October 6, 2013, three days after it was posted to their door, and the effective date of the Notice is **October 16, 2013**, in accordance with section 90 of the Act.

The Tenants vacated the unit on November 3, 2013 and the Landlord regained possession on November 4, 2013. The Landlord withdrew his request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,300.00 which was due October 1, 2013. The Tenants failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,300.00**.

As noted above this tenancy ended **October 16, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent for November 2013, not rent. The Tenants occupied the unit until November 3, 2013, and left the unit unclean and with damages. The Landlord attended the hearing on November 26, 2013, and had still not re-rented the unit. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of November 2013, in the amount of **\$1,300.00**.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenancy agreement provided in evidence indicates the Tenants were required to pay 2/5 of the utilities. The Landlord provided copies of the gas and cable / internet bill. Therefore, I award the Landlord unpaid utilities of \$45.00 for gas and \$45.00 for cable/internet for the total amount of **\$90.00**.

The evidence supports the Tenants three rent cheques were returned NSF and the statue and outside light were broken during their tenancy. Accordingly, I award the Landlord the undisputed amounts of \$75.00 in NSF bank charges; \$80.00 for the broken garden statue; and \$50.00 for the broken outside sensor light for a total amount of damages of **\$205.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

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

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,945.00** (\$1,300.00 + \$1,300.00 + \$90.00 + \$205.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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: November 26, 2013

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Residential Tenancy Branch

