



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing and the landlord's amended Application were both served on the tenants by registered mail. The landlord submitted registered mail tracking numbers in evidence for both packages and for both dates the landlord mailed the tenants their packages which included evidence on both occasions. The first registered mail packages were mailed separately to both tenants at the rental unit address on October 22, 2013 and was returned to the landlord as "unclaimed" on November 18, 2013. The second registered mail packages were mailed separately to both tenants at the rental unit address on November 18, 2013 and to date, show as not being claimed by either tenant according to the online registered mail postal tracking website, according to the agent. Section 90 of the *Act* deems that documents served by registered mail are deemed served five days after the documents are mailed. Therefore, I find that the tenants were deemed served with the landlord's original Application and evidence as of October 27, 2013. I find that the tenants were also deemed served with the landlord's amended Application as of November 23, 2013. I note that refusal or neglect to pick up their registered mail on the part of the tenants does not constitute grounds for a Review Consideration Application.

### Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that the tenants have been deemed to have abandoned the rental unit as of the morning of December 3, 2013, the day of the hearing. The agent stated that she posted a 24 hour prior notice of entry to the door of the tenants the morning before the day of the hearing, and in the morning of December 3, 2013, the agent entered the rental unit and was satisfied that the tenants had abandoned the rental unit. As a result, the agent requested to withdraw the landlord's request for an order of possession as the tenants had already given up possession of the rental unit by abandoning the rental unit effective December 3, 2013.

As the landlord did not deem the rental unit abandoned until the date of this hearing, I dismiss the landlord's monetary claim for loss of December 2013 rent with leave to reapply as the landlord may be able to re-rent the rental unit for the month of December 2013. The landlord is at liberty to re-apply for loss of December 2013 rent should the landlord suffer a loss of any portion of December 2013 rent.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A month to month tenancy agreement between the parties began on January 1, 2013. Although the tenancy agreement submitted in evidence indicates January 1, 2012, the year was written in error as the parties signed the tenancy agreement in December of 2012. As a result, I find the tenancy began on January 1, 2013. Monthly rent in the amount \$850.00 was due on the first day of each month during the tenancy. The tenants paid a \$425.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on October 21, 2013, after they served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenants dated October 8, 2013 on October 10, 2013 by posting the 10 Day Notice to the tenants' door. The 10 Day Notice has an effective vacancy date of October 18, 2013, which would automatically correct under the *Act* to October 23, 2013 as section 90 of

the *Act* states that documents served by posting to the tenants' door are deemed served three days after being posted to the door.

After the loss of rent for December 2013 has been dismissed with leave to reapply, the landlord is seeking a monetary order in the amount of \$2,800.00 comprised of the following:

Item Description	Amount
1. Unpaid portion of August 2013 rent	\$250.00
2. Unpaid rent for September 2013	\$850.00
3. Unpaid rent for October 2013	\$850.00
4. Loss of rent for November 2013	\$850.00
<b>TOTAL MONETARY CLAIM</b>	<b>\$2,800.00</b>

The agent provided undisputed testimony confirming the amounts described in the table above. The agent testified that the tenants did not dispute the 10 Day Notice after being with the 10 Day Notice. The amount listed as owed by the tenants on the 10 Day Notice is \$1,950.00 as of October 1, 2013. The agent testified that the tenants failed to pay any rent since being served with the 10 Day Notice. The landlord provided undisputed testimony that other tenants in the building witnessed the tenants at the rental unit as recently as late last week, a week before the hearing.

The landlord submitted a copy of the 10 Day Notice, proof of service documents, tenancy agreement and documents from the tenants in evidence.

### Analysis

Based on the documentary evidence, undisputed testimony of the agent, and on the balance of probabilities, I find the following.

**Monetary claim of landlord** – The agent testified that the tenants failed to pay \$250.00 for August 2013, and have not paid any rent for the months of September, October or November of 2013. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** the tenants breached section 26 of the *Act* by failing to pay rent as claimed by the landlord.

The agent provided undisputed testimony that other tenants in the building witnessed the tenants at the rental unit as recently as late last week, a week before the hearing. **I find** the landlord also suffered a loss of rent for November 2013 as the tenants were still

occupying the rental unit as recently as late last week. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$2,800.00** as claimed for unpaid rent and loss of rent comprised of \$250.00 for August 2013, \$850.00 for September 2013, \$850.00 for October 2013 and \$850.00 for November 2013. As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the landlord has established a total monetary claim of **\$2,850.00** comprised of \$2,800.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit, which the landlord continues to hold, in the amount of \$425.00, which has accrued \$0.00 in interest to date. **I order** the landlord to retain the tenants' full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$2,425.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord's claim for loss of December 2013 rent is dismissed with leave to reapply.

The landlord has established a total monetary claim of \$2,850.00 as indicated above. The landlord is ordered to retain the tenants' full security deposit of \$425.00 in partial satisfaction of the landlord's claim.

The landlord has been granted a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of \$2,425.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 3, 2013

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Residential Tenancy Branch