



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on November 4, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated November 4, 2013?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

g. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2013 and continue on a month basis. The rent was \$850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$425 on June 18, 2013. A term included in the tenancy agreement is as follows: "No Smoking on Property."

The tenant has failed to pay the rent for November and December and the sum of \$1700 remains outstanding.

The tenant testified the landlord has violated his rights on many occasions including:

- Failure to construct steps a pathway leading to the rental property in a proper way as evidenced by the fact that he and other family members have tripped on many occasions causing bodily injury to themselves
- Failure to provide receipts when cash paid
- Failure to provide a copy of the written tenancy agreement.
- Requiring him to smoke off of the property
- Telling him not to talk to the other tenant in the rental property.

The matter came to a head in late October when the landlords expressed displeasure about him smoking outside of his rental unit. The argument resulted and the landlords orally evicted him.

The landlord disputes much of this evidence. They testified the pathway has been approved by the building inspector. They testified they provided the tenant with a copy of the tenancy agreement at the start of the tenancy when the tenant requested it for the purpose of giving it to a government agency. The tenant did not request a receipt. However, in early November they provided him a copy of the receipts after he requested

it at that time. The landlord expressed concern about the tenant smoking in the rental unit and on the property. The tenancy agreement prohibits smoking on the property. The landlord pointed out the deleterious effect of second hand smoke.

The tenant did not dispute the evidence that he has failed to pay the rent for November and December. He testified he withheld the rent as the landlord orally evicted him and that it was necessary to have sufficient money to put a deposit on another rental unit. The tenant has not yet been able to find alternative accommodation.

Tenant's Application to Cancel the 10 day Notice to End Tenancy:  
Section 26(1) of the Residential Tenancy Act provides as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In short the Residential Tenancy Act does not permit a tenant to unilaterally withhold the rent. The tenant must first obtain an order from an arbitrator permitting the tenant all or a portion of the rent.

I determined the tenant has failed to establish sufficient cause for an order to cancel the 10 day Notice to End Tenancy. There is no dispute the tenant has failed to pay the rent for November and December and the sum of \$1700 is owed. The Notice is in the proper form. **As a result the tenant's application to cancel the Notice to End Tenancy is dismissed. The tenancy shall end.**

Tenant's Application for a Monetary Order:

The Amended Application for Dispute Resolution seeks a monetary order in the sum of \$500 to cover moving expenses. There is no basis for this claim. The tenancy is coming to an end because the tenant refused to pay the rent. Further, the dispute

between the parties came to a head because of the tenant smoking inside the rental unit and on the property. The tenant agreed to a term in the tenancy agreement that he would not smoke on the property. This is not an unreasonable term and it is binding on the parties. **As a result the tenant's application for a monetary order is dismissed.**

The tenant alleged the landlord has breached a number of tenant's rights. However, he has not made a claim for these alleged breaches in the Application and there is no jurisdiction to consider these claims unless they are set out in an Application for Dispute Resolution.

Landlords' Claim:

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to set aside the Notice to End Tenancy has been dismissed. An arbitrator has discretion as to when to set the effective date for the Order for Possession. I have considered that we are entering into the Christmas season. The tenant has two very young children. The monetary order granted will be giving the landlord credit for all of the rent for December. **Accordingly, I determined that it was appropriate to grant the landlord an Order for Possession with the effective date of December 31, 2013.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of November and December and the sum of \$1700 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. **I granted the landlord a monetary order in the sum of \$1700 plus the sum of \$50 in respect of the filing fee for a total of \$1750.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$425. **I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1325.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 19, 2013

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Residential Tenancy Branch

