



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPR, MNR, MND, MNDC, MNSD, FF  
TENANT: CNC

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking to end the tenancy, to be compensated for unpaid rent, to receive compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant has applied to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on December 31, 2013, in accordance with section 89 of the Act.

The Tenant did not participate in the Hearing and as result and in the absence of any evidence from the Tenant to support the Tenant's application, the application is dismissed without leave to reapply. The Landlord also said she was not served with the Tenant's application.

### Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is there damage to the unit, site or property and if so how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Are there damages or losses to the Landlords and if so how much?
6. Is the Landlord entitled to compensation for damage or loss and if so how much?
7. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy agreement started on October 1, 2013 as a month to month tenancy. Rent was \$1,400.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$700.00.

The Landlord said that she issued a 1 Month Notice to End the Tenancy dated November 21, 2013 because the Tenant had not paid the security deposit as indicated

in the tenancy agreement. The Landlord continued to say the Tenant paid the security deposit by November 26, 2013.

The Landlord said that the Tenant did not pay \$700.00 of rent for December, 2013 when it was due and as a result, on December 2, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for January, 2013 in the amount of \$1,400.00 as well.

The Landlord further indicated that the Tenant may not be living at the rental unit, but the Tenant's family is living at the rental unit and the Tenant has not returned the keys or given proper notice to end the tenancy. The Landlord requested an Order of Possession for as soon as possible.

The Landlord said she is also seeking to recover lost rental income for February, 2014 as she believe the rental unit has considerable damage to it and it will not be ready to rent for February, 2014, if she is successful in obtaining an Order of Possession in January, 2014. The Landlord submitted 12 photographs to support her claim about the damage to the unit. The photographs showed damage to the walls, some doors and to a bathroom. The Landlord requested the February rent of \$1,400.00 as lost rental income.

The Landlord continued to say that she is also claiming to damage to the unit, but she has not done any repairs to date, because she does not have possession of the rental unit. The Landlord submitted cost estimates, but no paid receipts. The Landlord was told by the Arbitrator that damage claims are based on paid receipts and that the Landlord could apply for the damages at a future date. The Landlord said she understood and agreed that was reasonable.

The Landlord also requested to retain the Tenant's security deposit of \$700.00 and to recover the filing fee of \$50.00.

#### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on December 5, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 10, 2013.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution with regard to the 10 Day Notice to End Tenancy.. Consequently, I find

pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for December, 2013, in the amount of \$700.00 and unpaid rent for January, 2014 in the amount of \$1,400.00. I further find that the Landlord is entitled to recover loss of rental income to February 14, 2014, in the amount of \$700.00 (\$1,400.00 X 14 of 28 days of February). The Landlord has an obligation to mitigate her damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,100.00	
	Loss of Rental Income:	\$ 700.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,850.00
Less:	Security Deposit	\$700.00	
	Subtotal:		\$ 700.00
	Balance Owing		\$2,150.00

#### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,150.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: January 22, 2014

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Residential Tenancy Branch

