



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MNR MNSD FF

### Preliminary Issues

The Landlord testified that her situation has changed since making this application as she was granted an Order of Possession under a separate emergency application to end the tenancy early (ET) on December 11, 2013. Also, the Tenants damaged the property before vacating on December 13, 2013. As a result the Landlord requested to amend her application to withdraw her requests for Orders of Possession and to offset the security deposit against the unpaid rent as she needed to apply the deposit against the damages.

Upon review of the Landlord's request, I find such a request would not prejudice the other party, and I grant the amendment as requested, pursuant to section 64 (3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 27, 2013, by the Landlord to obtain a Monetary Order for unpaid rent for November and December 2013 and to recover the cost of the filing fee from the Tenants for this application.

The Landlord testified that she personally served each Tenant with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on November 29, 2013. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act. Therefore, I proceeded in the Tenants' absence.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord testified that the Tenants entered into a month to month tenancy that began on November 1, 2013. The Tenants were given occupancy of the unit on approximately October 28, 2013, at which time they paid \$380.00 as the security deposit. Rent was payable on the first of each month in the amount of \$750.00.

The Landlord stated that when the Tenants failed to pay November 1, 2013 rent she posted a 10 Day Notice to their door on November 2, 2013. As stated above the Landlord was granted an emergency hearing and was awarded an Order of Possession at the December 11, 2013 hearing. The Tenants remained in the unit until December 13, 2013 and paid no rent for November or December. The Landlord has not been able to re-rent the unit as of yet, due to eviction circumstances and damage done to the unit.

### 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 November 5, 2013, three days after it was posted to their door, and the effective date of the Notice is **November 15, 2013**, in accordance with section 90 of the Act. The Tenants did not pay the rent and did not dispute the Notice.

The Landlord claimed unpaid rent of \$750.00 which was due November 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 **\$750.00**.

As noted above this tenancy ended **November 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for December 2013, not rent. The Tenants remained in possession of the unit until December 13, 2013, leaving damaged, which has prevented the Landlord from finding replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of December 2013, in the amount of **\$750.00**.

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

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,550.00** (\$750.00 + \$750.00 + \$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: January 21, 2014

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Residential Tenancy Branch

