



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNDC FF  
                             CNR MNR FF

### Introduction

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

The Landlord filed on November 20, 2013, seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for 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 Tenant for this application.

The Tenant filed on November 18, 2013, seeking an Order to cancel the notice to end tenancy for unpaid rent and to obtain a Monetary Order for the cost of emergency repairs; to have the Landlord ordered to make repairs to the unit, site or property; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for his application.

The Resident Manager submitted affirmed testimony that the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on November 21, 2013. Based on the foregoing, I find the Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act.

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite having his own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenant.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

### Background and Evidence

The Landlord submitted evidence which indicates the Tenant entered into a month to month tenancy that began on April 1, 2006. Rent began at \$660.00 per month and effective October 1, 2013 rent was increased to \$685.00 per month. On April 1, 2006 the Tenant paid \$300.00 as the security deposit. The Landlord purchased this building and the rights to the Tenant's tenancy in May 2013.

The Resident Manager testified that when the Tenant failed to pay his November 2013 rent of \$285.00 she personally served him with a 10 Day Notice for unpaid rent on November 2, 2013. The Tenant continues to reside in the unit and made two payments for which he was issued receipts indicating the payments were received for "use and occupancy only". The payments received consisted of \$224.00 paid December 2013 and \$685.00 paid in January 2014. They also issued the Tenant a letter on December 27, 2013 informing him that they were proceeding with the eviction.

The Landlord seeks a monetary order for \$1,196.00 which is comprised of \$685.00 owing for November 1, 2013; \$461.00 balance due for December 2013 (\$685.00 less \$224.00 payment), plus late payment fees of \$25.00 for November and December. The Resident Manager confirmed that the tenancy agreement does not provide for late payment fees.

### Analysis

Given the evidence before me, in the absence of testimony from the Tenant who did not appear despite this hearing being convened to hear matters for his own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by his evidence.

### **Landlord's Application**

In this case the Tenant received the 10 Day Notice on November 2, 2013, and the effective date of the Notice is **November 12, 2013**. The Tenant made application to dispute the Notice; however, I find there is insufficient evidence to prove he had grounds to withhold the payment of rent. Accordingly, I find that because the Tenant has not paid his rent in full, the 10 Day Notice is of full force and effect and this tenancy ended on the effective date of the Notice, **November 12, 2013**. Therefore, the Tenant must vacate the rental unit to which the notice relates pursuant to section 46 of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent.** The Landlord claims for unpaid rent of \$685.00 that was due November 1, 2013, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

As noted above this tenancy ended **November 12, 2013**, in accordance with the 10 Day Notice. The Tenant remains in the unit but has made payments totaling \$909.00 (\$224.00 + \$685.00) for use and occupancy, as noted on the receipts issued by the Landlord. Generally accepted accounting practices are that when a debt is owed and a payment is received, the payment is applied to the oldest debt. Therefore, I find the \$909.00 payments are applied to rent for November 2013 of \$685.00 and partial payment for use and occupancy for December 2013. This leaves a balance due for use and occupancy of **\$461.00 for December 2013**.

The Landlord will not regain possession of the unit until after service of the Order of Possession and the Landlord will need to search for a replacement tenant. Therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of **January 2014 in the amount of \$685.00**.

Section 7 of the Regulation stipulates that a landlord may charge a non-refundable fee for late payment of rent only if the tenancy agreement provides for such a charge. In this case the tenancy agreement does not provide for late payment charges. Therefore, I dismiss the Landlord's claim for late payment fees, without leave to reapply.

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*.

### **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,196.00** (\$461.00 + \$685.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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.

The Tenant's application is **HEREBY 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 13, 2014

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Residential Tenancy Branch

