



# 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 FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 17, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities, to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

### Background and Evidence

The Landlord submitted evidence which provided that the Tenant entered into a month to month tenancy that began on June 1, 2013. Rent is payable on the first of each month in the amount of \$850.00 and on June 1, 2013 the Tenant paid \$425.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay his December 1, 2013, rent a 10 Day Notice was posted to his door on December 5, 2103, at 1:30 p.m. No rent has been paid for December of January 2014 and the Tenant continues to reside in the unit.

The Tenant testified that he did not receive a 10 Day Notice posted to his door; however, he did receive a copy of the Notice in the registered mail he received from the Landlord sometime in December 2013. He requested that the Landlord allow him to continue with his tenancy and he would pay up the outstanding balance by the end of the month of January 2014. He argued that he had an altercation with another tenant which required him to be hospitalized so he could not work. He has since applied for E.I. so he should be able to get caught up.

The Landlord did not wish to continue this tenancy and argued that the incident the Tenant referenced did not happen until December 6<sup>th</sup>, 2013, which is after the date December rent was due and after the date she posted the 10 Day Notice. The Tenant has made no contact with the Landlord to discuss this situation which shows no effort to resolve this prior to the hearing. Her evidence was sent to the Tenant by registered mail on December 19, 2013; and was received by the Tenant on December 20, 2013.

### 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.

The Tenant claims that he did not receive the Notice that was taped to his door. He confirmed receipt of the 10 Day Notice by registered mail and the tracking information indicates it was received December 20, 2013. Therefore, the effective date of the Notice is **December 30, 2013**, in accordance with section 46 of the Act.

The Tenant did not pay the rent and did not dispute the Notice, within the required timeframes, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$850.00 which was due December 1, 2013. The Tenant 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 **\$850.00**.

As noted above this tenancy ended **December 30, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for January 2014, not rent. The Tenant is still occupying the unit which means the

Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of January 2013, in the amount of **\$850.00**.

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

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid December 2013 Rent	\$ 850.00
Use & Occupancy and Loss of rent for January 2014	850.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,750.00</b>
<b>LESS:</b> Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,325.00</u></b>

#### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,325.00**. 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.

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 06, 2014

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Residential Tenancy Branch

