



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords: OPR MND MNR MNSD MNDC FF

For the tenant: CNR MNDC PSF RR

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlords to provide services or facilities required by law, and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Landlord “AM” and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord was advised that her evidence was being excluded in full as she testified that she did not serve the tenant with her evidence as required by the rules of procedure. The landlord testified that she received 6 of the 12 pages from the tenant, which included a handwritten letter, but did not include a copy of a receipt. As a result, I have excluded the copy of the receipt from the tenant’s evidence

served on the Residential Tenancy Branch, as the landlord testified that she did not receive the other 6 pages and that a copy of a receipt was not contained inside the evidence package sent from the tenant.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In the matter before me, both parties indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to cancel the Notice to End Tenancy by the tenant, and for an order of possession, a monetary order for unpaid rent, and to retain the tenant's security deposit by the landlords. I find that not all the claims in the tenant's and landlords' Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice to End Tenancy and the landlords' application for an order of possession and for a monetary order for unpaid rent and to retain the security deposit, if the tenancy will be ending. The balance of the tenant's application, which includes a monetary order claim and a claim for a rent reduction, is dismissed, with leave to re-apply. The balance of the landlords' application, which includes a claim for damages, which is premature, is dismissed, with leave to re-apply.

Landlord AM requested to add unpaid rent for January 2014 of \$1,200.00 to her claim as the tenant continues to occupy the rental unit and confirmed during the hearing that he did not pay rent for January 2014. I find it reasonable that the tenant would know that rent for January 2014 was due on January 1, 2014 and as a result, is not prejudicial to the tenant, and will permit the landlords to add unpaid rent for January 2014 of \$1,200.00 to their claim.

At the outset of the hearing, the tenant testified that he had a person in the room with him during the hearing; however that person was not a witness. The tenant was clearly advised that if that person was a witness, the witness could not remain in the same room with the tenant during the proceeding. The tenant confirmed that he understood and that the person in the room was not a witness and was just a support for him. Later in the hearing, the tenant requested to call that person, whom he then identified as his girlfriend, as a witness. The tenant's request was denied and the tenant was reminded that at the outset of the hearing, he confirmed he had no witnesses to present.

### Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Are the landlords entitled to an order of possession due to unpaid rent under the *Act*?
- Are the landlords entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

The parties agreed that a fixed term tenancy began on October 1, 2013 and is scheduled to revert to a month to month tenancy after September 30, 2014. Monthly rent in the amount of \$1,200.00 is due on the first day of each month. The tenant paid a security deposit of \$600.00 to the landlords at the start of the tenancy, which the landlords continue to hold.

The landlords are seeking \$1,200.00 in unpaid rent for the month of December 2013, and \$1,200.00 in unpaid rent for the month of January 2014, for a total of unpaid rent in the amount of \$2,400.00. The tenant testified that he did not pay rent for January 2014 due to the landlord allegedly terminating services in the rental unit, but did pay rent of \$1,200.00 for the month of December 2013 in cash to landlord "AP" on December 5, 2013. Landlord AM disputed the tenant's testimony and stated that she has spoken with landlord AP and confirmed that neither landlord has received a cash payment from the tenant for the month of December 2013.

The tenant testified that he had cashed a cheque at Money Mart in the amount of \$1,183.00 on November 26, 2013 for work done on either November 22, 2013 or November 23, 2013, and used that money to pay landlord AP \$1,200.00 in cash on December 5, 2013 using other cash to top up the \$1,183.00 to the amount owing of \$1,200.00 and that he had a Money Mart receipt. As a result, the tenant was ordered to fax in a copy of the Money Mart receipt supporting that he had cashed a cheque in the amount of \$1,183.00 on November 26, 2013 by 1:00 p.m. on the date of the hearing. By the time the hearing ended, the tenant had over two hours before the deadline to locate the Money Mart receipt and fax it in, which the tenant failed to do. At 2:46 p.m., which was beyond the 1:00 p.m. deadline, the tenant did submit a fax; however, failed to submit a Money Mart receipt for November 26, 2013 or any other date supporting that he cashed a cheque in the amount of \$1,183.00.

The tenant confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") from the landlords dated December 7, 2013 on December 7, 2013. The tenant disputed the 10 Day Notice on December 9, 2013. The 10 Day Notice states that \$1,200.00 in unpaid rent was due on December 1, 2013 and had an effective vacancy date listed as December 17, 2013.

Although the parties discussed a possible mutually settled agreement, the parties ultimately did not agree to a mutually settled agreement during the hearing.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**10 Day Notice** – There is no dispute that the landlords issued a 10 Day Notice on December 7, 2013 for \$1,200.00 in unpaid rent due December 1, 2013. The tenant disputed that notice on December 9, 2013, which was within the five days permitted under section 46 of the *Act*. Although there is dispute about whether December 2013 rent was paid, the tenant did confirm that he has since failed to pay rent for January 2014, alleging that the landlord terminated services at the rental unit.

As a portion of the tenant's evidence was excluded as the landlord testified that she did not receive it, the tenant was permitted to fax in a receipt from Money Mart that he referred to during the hearing, to support his testimony that he cashed a cheque in the amount \$1,183.00 at Money Mart on November 26, 2013 as he claimed to have a receipt from Money Mart. The tenant was ordered to fax in that receipt from Money Mart in the amount of \$1,183.00 by 1:00 p.m. on the date of the hearing, which the tenant failed to do. The tenant did submit a fax at 2:46 p.m.; however, failed to include the Money Mart receipt as ordered.

Given the above, **I find** the tenant has provided insufficient evidence to prove that rent was paid for the month of December 2013. Furthermore, given that the tenant failed to submit the evidence he claimed to have had during the hearing, I prefer the evidence of the landlord that rent was not paid for the month of December 2013, which is consistent with the 10 Day Notice issued dated December 7, 2013. Therefore, **I find** that the 10 Day Notice dated December 7, 2013 is valid. **I dismiss** the tenant's application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice issued by the landlord which had an effective vacancy date of December 17, 2013. As the effective vacancy date has passed, **I grant** the landlords an order of possession for unpaid rent **effective two (2)**

**days after service on the tenant.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

**Landlords' claim for unpaid rent** – Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. **I find** that the tenant breached section 26 of the *Act* by failing to pay January 2014 rent in the amount of \$1,200.00 as the tenant confirmed that he had not paid January 2014 rent as of the date of the hearing, January 30, 2014. As described above, **I find** that the tenant has provided insufficient evidence to prove that he paid \$1,200.00 for rent for the month of December 2013. Given the above, **I find** the landlords have met the burden of proof and are entitled to monetary compensation of **\$2,400.00** in unpaid rent comprised of \$1,200.00 for unpaid December 2013 rent, and \$1,200.00 for unpaid January 2014 rent.

As the landlords' claim had merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

The tenant's security deposit of \$600.00 has accrued no interest since the start of the tenancy, which the landlords continue to hold. **I find** that the landlord has established a total monetary claim of **\$2,450.00** consisting of \$2,400.00 in unpaid rent and the \$50.00 filing fee. **I ORDER** the landlords to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,850.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The 10 Day Notice has been upheld and the tenant's application to cancel the 10 Day Notice was dismissed. The landlords have been granted order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,450.00 comprised of \$2,400.00 in unpaid rent, plus the \$50.00 filing fee. The landlords have been ordered to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,850.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 31, 2014

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Residential Tenancy Branch

