



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FLETCHER HOLDINGS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the agent and the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the tenant was served the Notice of Hearing on November 30, 2013 via personal service at the rental unit, which was witnessed by third party, KH. The agent was unable to confirm if the package containing the Notice of Hearing contained the landlord’s evidence. In addition, the agent submitted a USB drive in evidence, which was excluded in full as it was served on the Residential Tenancy Branch late and not in accordance with the rules of procedure, and it was not served on the tenant as the tenant’s forwarding address is not known to the landlord, according to the agent. As a result of the above, and without any evidence to the contrary, I accept the undisputed testimony of the agent that the tenant was served with the Notice of Hearing personally at the rental unit on November 30, 2013. I do not accept that the tenant was served with the landlord’s evidence, and as a result, have excluded all of the landlord’s evidence from the hearing.

### Preliminary and Procedural Matters

During the hearing, the agent requested to reduce the landlord’s claim from \$6,000.00 to \$4,800.00, comprised of unpaid rent of \$1,200.00 for the months of September 2013, October 2013, and November 2013, plus \$1,200.00 for loss of rent for the month of December 2013. I find that a reduction in the landlord’s claim does not prejudice the tenant, and as a result, I permit the landlord to reduce their monetary claim against the tenant during the hearing.

The agent stated that the tenant vacated the rental unit on November 30, 2013. The agent indicated that the landlord was still requesting an order of possession; however, as the tenant failed to remove all of his belongings and the landlord wanted an order of possession should the tenant decide to return to the rental unit.

#### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order 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 agent testified that a month to month tenancy agreement began on May 1, 2011. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy.

The agent testified that the tenant was served with a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated November 7, 2013 by posting the 10 Day Notice on the tenant's door on November 7, 2013. The effective vacancy date on the 10 Day Notice was listed as November 20, 2013, according to the agent. The amount listed as the amount owing for unpaid rent was \$3,600.00 due as of November 1, 2013. The agent testified that the tenant did not pay any of the amount owing as indicated on the 10 Day Notice or dispute the 10 Day Notice within 5 days of the deemed service date. The deemed service date would be three days after the 10 Day Notice was posted to the tenant's door, in accordance with section 90 of the *Act*.

The agent testified that since being served the 10 Day Notice, the landlord is also claiming the loss of rent in the amount of \$1,200.00 for the month of December 2013 as the tenant vacated the rental unit on November 30, 2013 and failed to remove all of his personal belongings in the rental unit. The agent stated that as a result, the rental unit could not be rented for the month of December 2013 due to the tenant failing to leave the rental unit in reasonably clean condition as required by section 37 of the *Act*.

#### Analysis

Based on the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

##### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Order of Possession** - I find that the tenant failed to pay the monthly rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which in the matter before me would be November 20, 2013 as the 10 Day Notice was deemed to have been served on November 10, 2013 pursuant to section 90 of the *Act*. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant as the effective vacancy date of the 10 Day Notice, November 20, 2013, has passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

**Claim for unpaid rent and loss of rent** – The agent testified that the tenant has failed to pay \$1,200.00 for rent for the months of September 2013, October 2013, November 2013, and is also seeking the loss of rent for the month of December 2013 in the amount of \$1,200.00. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, 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.

I accept the agent's undisputed testimony that the tenant did not vacate the rental unit until November 30, 2013, and that the tenant left some of their personal items in the rental unit, and that the rental unit was not left in a reasonably clean condition which is a breach of section 37 of the *Act*, and which prevented the landlord from re-renting the rental unit for the month of December 2013. Therefore, based on the above, I find the landlord has met the burden of proof and has established a monetary claim of **\$4,800.00** comprised of \$1,200.00 in unpaid rent for the months of September 2013, October 2013, November 2013, plus a loss of \$1,200.00 rent for the month of December 2013.

As the landlord's application has merit, **I grant** the landlord the recovery of the **\$50.00** filing fee. The tenant's security deposit of \$600.00 has accrued \$0.00 in interest since the start of the tenancy.

**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 tenant's security deposit, which has accrued no interest, as follows:

Unpaid September 2013 rent	\$1,200.00
Unpaid October 2013 rent	\$1,200.00
Unpaid November 2013 rent	\$1,200.00
Loss of December 2013 rent	\$1,200.00
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$4,850.00</b>
<i>(Less Tenant's Security Deposit of \$600.00 with \$0.00 in interest )</i>	<i>-( \$600.00 )</i>
<b>TOTAL OWING BY THE TENANT TO LANDLORD</b>	<b>\$4,250.00</b>

**I ORDER** the landlord to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's \$4,850.00 monetary claim, and **I grant** the landlord a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of **\$4,250.00**. 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 landlord has been granted an order of possession effective two (2) days after service upon 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 \$4,850.00 as described above. The landlord has been ordered to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$4,250.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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 21, 2014

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Residential Tenancy Branch

