



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 4171 INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNR, MNR, MNDC, LRE, OPL, MNSD, MNDC, FF

### Introduction

The tenant has filed an Application for Dispute Resolution pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and I was designated to conduct a hearing with respect to this application. The tenant seeks an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities), an order for repairs, and a monetary order as against the landlord. The hearing was scheduled to be heard by telephone conference, with specific details and instructions about the time and date, phone numbers, passcode, and other procedures, given on the "Notice of a Dispute Resolution Hearing". The tenant failed to join the conference call hearing. The landlord attended. In the absence of any submissions or testimony at the hearing from the tenant upon which to make a decision, and as the landlord attended, I have dismissed the tenant's application, with no liberty to reapply being granted.

The landlord has also applied for dispute resolution, and requests an Order of Possession, a Monetary Order, and an order to retain the security deposit.

### Issues to Be Decided

- Is the Notice to End Tenancy (the "Notice") served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

### Background and Evidence

This tenancy began on October 25, 2013. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$850.00. A security deposit of \$425.00 was paid at the start of the tenancy. The tenant fell into arrears, and as of January 3, 2014 owed \$1,305.00. The landlord served tenant a 10-Day Notice to End Tenancy on January for non-payment of rent. The tenant filed a dispute of that notice on January 14, 2014, indicating the notice had been received. No rent has been paid since that time. The landlord has recently inspected the unit, and is of the view that the entire rent for February will be lost, as once the tenant vacates, it will take 2 weeks to clean and repair all of the damage caused by the tenant.

### Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay her rent on the first day of each month, even though there may have been repairs needed to the premises. The tenant could have filed an application for an order for repairs, but it was not a legal option for the tenant simply to refuse to pay rent. The landlord was therefore entitled in law to serve the notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant owes some rent for December, and has paid no rent for January or February. I accept that the landlord will not be able to re-rent the premises prior to March 1, 2014, and the full loss of rent to the landlord to the end of February is \$2,155.00.

The landlord is entitled to an award of \$2,155.00 representing the rental arrears, plus \$50.00 as recovery of the landlord's filing fee. The landlord is also entitled to retain the security deposit in partial satisfaction of the award.

### Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$2,155.00, representing the rental arrears and the recovery of the filing fee. The security deposit including accrued interest totals \$425.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained by the landlord, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$1,730.00, be paid immediately by the tenant.

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: February 05, 2014

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Residential Tenancy Branch

