



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Dispute Codes:

**MT, CNR, RR, OPR, MNR, MNSD, FF**

## Introduction

This was a cross-application hearing.

The tenants applied to cancel a 10 day Notice to end tenancy for unpaid rent or utilities, more time to cancel the Notice, to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from the landlord.

The landlord applied requesting a Order of possession; a monetary Order for unpaid rent; compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fees. The application details indicated that the landlord wished to end the tenancy early and requested compensation for damage to the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

## Preliminary Matters

The parties confirmed receipt of each other's applications within the required time-frame. The only evidence supplied was a copy of the 10 day notice to end tenancy issued on December 22, 2013.

The landlord withdrew the portion of the application requesting compensation for damage to the unit; the details of the dispute section of the application had included a claim.

The landlord said that they had evidence to submit but they were told by a Service BC employee that they did not need to make an evidence submission. In the absence of evidence, the landlord was able to provide oral testimony. When making a claim either party is entitled to submit evidence to the Residential Tenancy Branch and must also serve the other party with that evidence.

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding is the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice ending tenancy and dismissed the balance of the application with liberty to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenants?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 7, 2012, rent was \$900.00 per month, due on the 7th day of each month. A security deposit in the sum of \$450.00 was paid.

The landlord said that 2 notices of rent increase were served to the tenants; the 1st effective January 2012 and a 2<sup>nd</sup> effective February 2014. Copies of the notices were not supplied. The tenants disputed receipt of the notices. There was no dispute that rent was at least \$900.00 per month.

The tenants confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 31, 2013. The Notice was posted to the tenant's door on December 22, 2013; the date the Notice was issued.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$910.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

Within 5 days of December 26, 2013 the tenants applied to dispute the Notice. During the hearing the tenants acknowledged that rent has not been paid since November, 2013. The tenants confirmed the landlord is owed rent for December 2013, January 2014 and February 2014.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3<sup>rd</sup> day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy on December 26, 2013; the date the tenants confirmed receipt.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on December 26, 2013, I find that the earliest effective date of the Notice is January 5, 2014.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to end tenancy was January 5, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on January 5, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants filed to dispute the Notice but had not paid the rent that was due. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; January 5, 2014.

Therefore, the landlord has been granted an Order of possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on the acknowledgment of the tenants, I find that the tenants have not paid rent in the amount of \$2,700.00; the amount claimed by the landlord for unpaid rent (December 2013 to February 2014, inclusive.)

I find that the landlord's application has merit and, pursuant to section 72 of the Act, that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$450.00 security deposit in partial satisfaction of the claim.

Therefore, the landlord has established a monetary claim, in the amount of \$2,750.00, which is comprised of unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,300.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's application is dismissed, as rent has not been paid.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenant's application to cancel the Notice is dismissed; a portion of the application, referenced under preliminary matters, is dismissed with leave to reapply.

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: February 17, 2014

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Residential Tenancy Branch

