



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MND MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 27, 2013, and amended on January 22, 2014, by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was personally served with copies of the Landlord's original application for dispute resolution and Notice of dispute resolution hearing on December 30, 2013. The amended application was sent regular mail to the Tenant on January 24, 2014.

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given to a tenant in one of the following ways: by leaving a copy with the person; by sending a copy by registered mail to the address at which the person resides; by sending a copy by registered mail to a forwarding address provided by the tenant; or as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the above I find the Landlords' amended application of January 22, 2014, which increased the monetary amount from \$1,077.50 to \$1,831.44, was not served to the Tenant in accordance with Section 89 of the Act. Therefore, I dismiss the additional items claimed, with leave to reapply. The original application was served in accordance with the Act; therefore, I proceed to hear the merits of that claim, in the Tenant's absence.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted evidence that the parties entered into a verbal month to month tenancy that commenced on June 1, 2012. The Tenant was initially required to pay rent of \$675.00 on the last day of each month and on or before June 1, 2012 the Tenant paid \$337.50 as the security deposit. Effective sometime in the spring of 2013 the rent was reduced to \$600.00 per month to accommodate the Tenant during her return to school.

The Landlord testified that when the Tenant failed to pay her November 30, 2013 rent a 10 Day Notice was posted to her door on December 2, 2013 for \$600.00 in outstanding rent. On December 18, 2013, the Tenant informed the Landlords that she had moved out and that she did not want anything that was left inside the unit. The Landlord said they regained possession of the unit as of December 19, 2013, and found the unit dirty, damaged, and strewn with garbage and unwanted personal possessions. The Landlord pointed to their evidence which included receipts for repairs and 13 photos displaying the condition of the rental unit on December 19, 2013.

The Landlord confirmed that they were withdrawing their request for an Order of Possession and stated they wished to proceed with their monetary claim of \$1,745.85. Their initial claim included estimated amount but the actual amounts are: \$600.00 December rent that was due November 30, 2013; \$300.00 for loss of rent for half of January as they were not able to re-rent the unit until January 15, 2014, due to the condition the unit was left in; \$120.00 for cleaning; \$191.20 for painting (\$146.86 + \$44.34); \$100.00 for debris removal (\$60.00 + \$40.00); and \$434.65 for materials and labour to complete the required repairs (\$214.05 + \$3.63 + \$86.00 + \$57.69 + \$73.28), as supported by the receipts provided in their evidence.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 26, 32(3) and 37(2) of the Act, by failing to pay the November 30, 2013, rent, and vacating the unit leaving it unclean and with some damage at the end of the tenancy which caused the Landlords to suffer a loss of rent for the period of January 1 – 14, 2014.

As per the foregoing I find the Landlords have met the burden of proof and I award them unpaid rent, loss of rent and damages in the amount of **\$1,745.85** (\$600.00 + \$300.00 + \$845.85).

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are 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 rent, loss of rent, and damages	\$1,745.85
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,795.85
<b>LESS:</b> Security Deposit \$337.50 + Interest 0.00	<u>-337.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,458.35</u></b>

Conclusion

The Landlords withdrew their request for an Order of Possession.

The Landlords have been awarded a Monetary Order in the amount of **\$1,458.35**. 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: February 18, 2014

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Residential Tenancy Branch

