



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 8, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent, to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord provided affirmed testimony which indicates the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on November 8 2013, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on November 13, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord testified that the Tenant entered into a verbal tenancy agreement for a month to month tenancy that commenced in July 2013. The Tenant was required to pay rent of \$475.00 on the first of each month and in July 2013 the Tenant paid \$237.50 as the security deposit. When the Tenant failed to pay his October rent in full a 10 Day Notice was personally served to the Tenant on October 21, 2013, for \$235.00 of unpaid rent that was due October 1, 2013.

The Landlord submitted that the Tenant vacated the property November 2, 2013 so he is now seeking to recover the \$235.00 owed from October 2013, plus \$15.33 for the extra day in November, plus \$459.67 for ending the tenancy with improper notice. The Landlord indicated that he was not able to re-rent the unit until December 1, 2013.

### Analysis

Given 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 undisputed version of events as discussed by the Landlord.

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*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on October 21, 2013, and the effective date of the Notice is **October 31, 2013**. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **October 31, 2013**, pursuant to section 46(5) of the *Act*.

The Landlord claimed unpaid rent of \$235.00 that was due October 1, 2013, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent up to October 31, 2013, in the amount of **\$235.00**.

As noted above, this tenancy ended **October 31, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the one day the Tenant over held the unit in November 2013. Accordingly, I award the Landlord use and occupancy for November 1, 2013 in the amount of **\$15.33**.

Section 44(1)(a)(ii) provides that a tenancy ends if the landlord gives notice to end the tenancy in accordance with section 46 [*landlord's notice: non-payment of rent*].

As noted above, the Landlord served the Tenant a 10 Day Notice for unpaid rent on October 21, 2013, which ended the tenancy on October 31, 2013. Therefore, the Tenant was not required to serve the Landlord written notice to end the tenancy. That being

said, it was the Tenant's action of not paying rent that caused the Landlord to end the tenancy, which resulted in a loss of rent for November.

A party who makes an application for monetary compensation against another party has the burden to prove they did whatever was reasonable to minimize the damage or loss. After careful consideration of the foregoing, I find the Landlord provided insufficient evidence to prove he did what was reasonable to re-rent the unit as soon as possible. I make this finding in part because there was no evidence provided to support how or when the Landlord advertised the unit and there was no evidence that he took reasonable steps to re-rent the unit as soon as possible. Accordingly, I dismiss the claim for loss of rent for November, 2013, without leave to reapply.

The Landlord has primarily succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**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 Tenants' security deposit plus interest as follows:

Unpaid Rent	\$235.00
Use & Occupancy November 1, 2013	15.33
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$300.00
<b>LESS:</b> Security Deposit \$237.50 + Interest 0.00	<u>-237.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 62.83</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order for \$. 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 21, 2014

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Residential Tenancy Branch

