



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      FF, MNR, MND, MNSD & MNDC

## Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I granted the landlord's application to amend his Application for Dispute Resolution to include a claim for non-payment of rent for February 2014.

I find that the Notice to End Tenancy dated July 9, 2013 was personally served on the Tenant on July 9, 2013. The landlord has also served several other 10 day Notices on the tenants since then. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenants reside on December 22, 2013. With respect to each of the applicant's claims I find as follows:

## Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 24, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable on the first day of each month. The tenants paid a security deposit of \$425 at the start of the tenancy.

The tenants have failed to pay the rent for July, August, September, October, November, December 2013, January 2014 and February 2014 and the sum of \$6800 remains outstanding.

The tenants do not dispute the evidence of the landlord that they have failed to pay the rent for the months claimed. They also stated they are prepared to vacate the rental unit on February 28, 2014. However, they submit they are entitled to an abatement of rent because the landlord has breached section 32 of the Residential Tenancy Act and has failed to obtain an occupancy permit. They also submit that the tenancy agreement is null and void because the landlord has failed to obtain an occupancy permit. The tenants filed an Application for Dispute Resolution on January 29, 2014 and those issues are set for hearing by conference call on March 17, 2014.

### Analysis:

Section 26(1) of the Residential Tenancy Act provides as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(5) of the Residential Tenancy Act provides as follows:

**Landlord's notice: non-payment of rent**

**46** (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The parties consented to a monetary order for the outstanding rent and an Order for Possession for February 28, 2014. The tenants consent is conditional that it is without prejudice to their right to claim reimbursement for all of the outstanding rent in this order on the basis the landlords has breached section 32 of the Residential Tenancy Act and also, has failed to obtain an occupancy permit therefore making the tenancy agreement null and void.

I determined the landlord is entitled to a monetary order for the outstanding rent (or for "use and occupancy rent" if it is later determined the tenancy agreement is null and void) and an Order for Possession. This determination is made without prejudice to the tenant's right to argue they are entitled to reimbursement of the amount of the monetary order. I have not made a determination on the merits and the arbitrator who has been assigned this file on March 17, 2014 is free to make her/his own decision with respect to the tenants' claims.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy within the required time period set out in the Residential Tenancy Act. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. The parties consented to an Order for Possession

effective the end of February. Accordingly, I granted the landlord an Order for Possession effective February 28, 2014. .

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of July, August, September, October, November, December 2013, January 2014 and February 2014 and the sum of \$6800 remains outstanding. I granted the landlord a monetary order in the sum of \$6800 plus the sum of \$100 in respect of the filing fee for a total of \$6900. This order is made without prejudice to the tenants' right to claim an abatement of rent and reimbursement of the amount of this order as claimed in their application which is set for hearing on March 17, 2014.

Security Deposit

**I determined the security deposit plus interest totals the sum of \$425. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$6475.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 05, 2014

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Residential Tenancy Branch

