



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: CNR MNDC ERP PSF RR  
For the landlord: OPR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons, to provide services or facilities required by law, and to authorize the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord applied for an order of possession for unpaid rent or utilities, a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee. I note that the landlord wrote in his application that he is also seeking to recover unpaid rent, and as a result, the landlord's application is amended pursuant to section 64 of the *Act* to include the landlord's claim for unpaid rent.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. Both parties confirmed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing, with the exception of the tenant's evidence package dated February 6, 2014. The tenant's evidence package dated February 6, 2014 was excluded from the hearing as it was served late on the Residential Tenancy Branch, and not in accordance with the rules of procedure.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on his Application for Dispute Resolution, the most urgent of which is to cancel the 10 Day Notice. I find that not all the claims in the tenant's Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice, and the landlord's request for an order of possession, unpaid rent and to retain the tenant's security deposit. The remainder of the tenant's application is **dismissed, with leave to re-apply.**

At the outset of the hearing, the landlord reduced his monetary claim from \$2,000.00 in unpaid rent to \$1,000.00 for unpaid rent for the month of January 2014 only. I find that a reduction in the landlord's claim does not prejudice the tenant. As a result, I permit the reduction of the landlord's monetary claim.

### Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began on September 1, 2013. Monthly rent in the amount of \$1,000.00 is due on the first day of each month. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed that he was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated January 14, 2014 on either January 15, 2014 or January 16, 2014. The tenant disputed the 10 Day Notice on January 17, 2014, which is within the 5 day timeline defined under section 46 of the *Act*.

The tenant confirmed that the effective vacancy date was listed as January 23, 2014. According to the 10 Day Notice, the tenant did not pay rent in the amount of \$1,000.00 due January 1, 2104. The tenant testified that he did not pay rent for the month of January 2014, due to a failure with the oven in the rental unit, which the tenant alleges stopped working on December 18, 2014. The tenant stated that he used the rent for January 2014 towards the purchase of the oven. The tenant stated that he paid \$1,000.00 for the month of February 2014 on February 3, 2014, and was issued a receipt for "use and occupancy" by the landlord. The landlord stated that he is seeking a two day order of possession.

Although the parties discussed a possible mutual agreement, ultimately the parties could not reach an agreement and no mutual agreement was reached during the hearing.

### Analysis

Based on the testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Based on the tenant's testimony, **I find** that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The landlord did not receive rent in the amount of \$1,000.00 for the month of January 2014. Section 26 of the *Act* states that the tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent, which I find the tenant does not have in the matter before me.

Given the above, **I find** that the 10 Day Notice dated January 14, 2014 is valid and that the tenancy ended on the corrected effective date of the 10 Day Notice, which was January 26, 2014, using January 16, 2014, as the date the tenant received the 10 Day Notice. Given the above and taking into account the landlord's application for an order of possession, **I grant** the landlord an order of possession **effective two (2) days after service on the tenant**. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I accept the undisputed testimony that the tenant failed to pay January 2014 rent in the amount of \$1,000.00. Given the above, I find the landlord has met the burden of proof in proving that the tenant breached section 26 of the *Act* and that the landlord is entitled to compensation of \$1,000.00 for unpaid rent for the month of January 2014.

As the landlord's application had merit, **I find** the landlord is entitled to recover the filing fee in the amount of **\$50.00**.

**I find** that the landlord has established a total monetary claim of **\$1,050.00** comprised of \$1,000.00 in unpaid rent, plus the \$50.00 filing fee. **I ORDER** the landlord to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$550.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenant's application to cancel the 10 Day Notice was dismissed. The 10 Day Notice was upheld and the landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,050.00 comprised of \$1,000.00 in unpaid rent, plus the \$50.00 filing fee. The landlord has been ordered to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlord's claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$550.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 13, 2014

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Residential Tenancy Branch

