



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Irwin Collision Repairs Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant: OPT, MT

For the landlord: OPR, OPC, MND, MNR FF

### Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act").

The tenant applied for an order granting more time to make an application to cancel a notice to end tenancy and an order of possession for the rental unit.

The landlords applied for an order of possession for the rental unit due to unpaid rent and for alleged cause, a monetary order for unpaid rent and alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter #1-* At the outset of the hearing, the service of the respective applications was discussed; the landlord acknowledged receiving the tenant's application and the tenant denied receiving the landlords' application. The landlord stated that they sent the tenant notice of their hearing and their application via registered mail to his address, and the mail went unclaimed despite two notices. I find the landlord served the tenant their application in a manner required under section 89(1) of the Act and the hearing proceeded on both applications.

*Preliminary matter #2-* The landlord applied seeking an order of possession for the rental unit based upon a 1 Month Notice to End Tenancy for Cause, but confirmed that the tenant had not been issued such a Notice. I therefore excluded this request for consideration.

Issue(s) to be Decided

Is the tenant entitled to an order of possession for the rental unit and to recover the filing fee?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on January 1, 2013, monthly rent is \$800 payable on the first day of the month, and the tenant paid a security deposit of \$400 at the beginning of the tenancy.

The landlord's monetary claim listed in their application was \$1400, including \$800 for unpaid rent for January 2014, and damage to a door in the rental unit for \$600.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord submitted that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on January 3, 2014, by attaching it to the tenant's door, listing unpaid rent of \$800 as of January 1, 2014. The effective move-out date listed was January 13, 2014. The tenant acknowledged receiving the Notice on the date it was issued.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent, and now owes the amount of \$1600 in total unpaid rent through the date of the hearing, including February 2014, which they are also requesting.

As to the claim for door damage, the landlord submitted that the tenant damaged the door and that it would need replacing.

In response to the landlord's application, the tenant claimed that the landlord refused his January rent payment when offered. In further explanation, the tenant said that a sign on the landlord's office door stated that the office was closed for the holidays, so that he was unable to deliver his rent on January 1, 2, or 3.

The tenant further submitted that when the landlord called him at work on January 6, 2014, to inquire about rent, he informed her that he had the rent payment. The tenant testified that the landlord said that she would accept the rent, but that he was "evicted," which according to the tenant, meant that the landlord refused his rent payment.

The tenant testified that the landlord again refused his rent when he offered on the day prior to the hearing to pay \$2400 in return for staying in the rental unit until April, which was refused by the landlord.

In response, the landlord stated that she has never refused rent, testifying that when she called the tenant on January 6, the tenant informed her he had to pay child support and would not have the rent.

The landlord denied that the tenant offered to pay \$2400 the day prior to this hearing; rather the tenant stated he could pay \$1600 by February 14, 2014.

#### Analysis

#### **Landlord's Application:**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within business five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient evidence that the tenant owed the landlord rent when the Notice was issued and that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice as the tenant failed to convince me he attempted to pay rent for January or February 2014. I do not find that the tenant ever tendered payment and his testimony reflects that he never attended the landlord's office to make such a payment.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$1600 for unpaid rent through February 2014.

As to the landlord's claim for \$600 for door damage, I find this is an issue relating to the end of the tenancy, as the tenant has an opportunity to make any repairs for which he would be liable prior to the tenancy ending. I therefore dismiss the landlord's monetary claim for \$600, with leave to reapply.

Due to the above, I find that the landlord is entitled to a monetary award in the amount of \$1650, comprised of outstanding rent of \$1600 through February 2014, and the \$50 filing fee paid by the landlord for this application.

**Tenant's application:**

Due to the above, the tenant's application for dispute resolution seeking an order of possession for the rental unit is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord, is therefore valid and enforceable and I have issued the landlord an order of possession for the rental unit.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord's application has been partially successful.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, including bailiff fees, are recoverable from the tenant.

At the landlord's request, I allow them to retain the tenant's security deposit of \$400 in partial satisfaction of their monetary award of \$1650, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1250, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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 12, 2014

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Residential Tenancy Branch

