



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent and for damage(s) to the unit pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Preliminary Issues – Service of Documents

The landlords entered written evidence that the male landlord handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 5:00 p.m. on January 2, 2014. Although the male landlord was out of the country, the landlords entered into written evidence a signed Proof of Service document, witnessed by the female landlord's uncle, attesting to the service of the 10 Day Notice to the tenant at the above-noted time and date.

The tenant and his advocate/witness (the advocate) who has been residing at the rental unit with him, testified that the male landlord did not give him the 10 Day Notice on January 2, 2014. The advocate testified that the first and only time the tenant received the 10 Day Notice was when the landlords included the first page of that two page notice in the landlords' written evidence package. The advocate maintained that the landlords did not provide the tenant with the second page of the 10 Day Notice.

The landlords also entered into written evidence a second notice to end this tenancy of January 10, 2014. As this notice was not on an approved Residential Tenancy Branch (RTB) form and section 52 of the *Act* requires that any notice to end a tenancy issued by a landlord must be on an approved form, this notice has no legal effect.

The tenant confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on January 14, 2014. Both parties agreed that they had received one another's written evidence packages. I am satisfied that the dispute resolution hearing package and the parties' written evidence packages were served to one another in accordance with the *Act*.

#### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and for damage or damages arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

By way of an oral agreement between the male landlord and the tenant, the tenant moved into the rental unit on October 1, 2013. Monthly rent is set at \$600.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$300.00 security deposit paid on September 9, 2013.

The landlords identified \$600.00 as owing in the 10 Day Notice. The tenant confirmed that he has not paid any rent for either January or February 2014, although he and his advocate testified that he tried to pay his rent but the landlords refused to accept these payments. The tenant also testified that he is attempting to rent accommodations elsewhere and was hopeful that he would be able to vacate this rental unit by February 15, 2014, or by February 28, 2014, at the latest. He said that he was awaiting a return phone call regarding his search for alternate accommodations.

The landlords' original application for a monetary award of \$1,000.00 was revised by way of an amended application for dispute resolution increasing the amount of the requested monetary award to \$3,967.04. The female landlord, the agent for the landlords in this matter (the agent), testified that she handed the tenant a copy of the landlords' revised application on January 30, 2014. The tenant confirmed that he had received the landlords' revised application.

With the landlords' revised application for a monetary award of \$3,967.04, the landlords included a Monetary Order Worksheet for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid January 2014 Rent	\$600.00
Unpaid February 2014 Rent	600.00
Pay-per-View Charges from Shaw Cable	37.95

Cleaning Walls and Ceilings	393.75
Cleaning Sofas and Carpeted Areas	585.34
Damages for Physical and Emotional Duress due to Smoking in this Rental Unit (3 individuals @ \$500.00 each + 1 individual @ \$250.00 = \$1,750.00)	1,750.00
<b>Total Monetary Order Requested</b>	<b>\$3,967.04</b>

### Analysis

Although the male landlord and the agent's uncle were not present at this hearing, they did sign a Proof of Service document in which they maintained that they handed the tenant the 10 Day Notice on January 2, 2014. The agent testified that she understood that the male landlord (her father) handed the tenant both pages of this two-page Notice. By contrast, the tenant and his advocate testified that the tenant did not receive this document until it was included with the landlords' written evidence package.

Based on a balance of probabilities and the fact that the tenant confirmed that he has not paid his rent for either January or February 2014, I find it more likely than not that the male landlord did serve the 10 Day Notice to the tenant as declared in his statement and as witnessed by the agent's uncle on January 2, 2014, the day after his rent became due.

The tenant failed to pay the January 2014 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by January 12, 2014. Given the nature of the disputed testimony and the possibility that the tenants did not receive all of the 10 Day Notice, I find that the landlords are entitled to an Order of Possession to take effect by 1:00 p.m. on February 28, 2014. This coincides with the date that the tenant said he was planning to have vacated the rental unit. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that date and time, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenant

has not paid rent for either January or February 2014. As such, I find that the landlords are entitled to a monetary award of \$600.00 in unpaid rent owing for both of these months.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The agent testified that the figures identified in the landlords' Monetary Order Worksheet and in documents provided by the landlords are estimates only and that no work has been conducted to clean the premises, the sofas or the carpets. As such, I dismiss these claims for damage with leave to reapply as these expenses have not yet been incurred and the landlords do not yet have possession of the rental unit.

I heard conflicting evidence from the parties with respect to the landlords' claim for \$37.95 in pay-per-view movies for which the landlords maintained the tenant is responsible. The landlords provided detailed copies of Shaw Cable bills. However, some of this evidence was illegible and those portions that were legible were difficult to understand. The tenant's advocate testified that the tenant was not disputing \$22.85 of the landlords' claim for pay-per-view movies. I allow the landlords the \$22.85 undisputed portion of the landlords' claim for pay-per-view movies purchased by the tenant.

I have also considered the evidence submitted in support of the landlords' claim for monetary awards for duress due to the effects caused by the tenant's in the rental unit. Most of the landlords' evidence in this regard constituted letters from various family members who maintained that the smoking in the rental unit below them was causing them health problems and adding stress to their lives. Although awards for these types of damages can be issued, much more evidence would have needed to have been provided in order to enable me to issue a monetary award for such items in the landlords' favour. This evidence indicated that the tenant's smoking inside the rental unit appears to have been a fairly recent occurrence. Without a written tenancy agreement, it is not even clear as to whether smoking was or was not allowed in this rental unit. The only actual expense incurred the agent could point to was for

medication she purchased, for which she expects to be reimbursed through her health care plan. I dismiss the landlords' claim for damages without leave to reapply.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

The landlords are provided with a formal copy of an Order of Possession effective by 1:00 p.m. on February 28, 2014. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and utilities and to retain the security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid January 2014 Rent	\$600.00
Unpaid February 2014 Rent	600.00
Pay-per-View Charges from Shaw Cable	22.85
Less Security Deposit	-300.00
<b>Total Monetary Order</b>	<b>\$922.85</b>

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlords' claim for damages due to physical and emotional duress without leave to reapply. I dismiss the remainder of the landlords' application for damage to the rental unit with leave to reapply.

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 07, 2014

---

Residential Tenancy Branch

