



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: CNR

For the landlord: OPR, MNR, MNSD, 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 for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

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

The landlords attended the hearing; the tenant did not attend.

The landlords testified that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on February 13, 2014 to the mailing address provided by the tenant in his application for dispute resolution. The landlords provided testimony of the tracking number for the registered mail.

Based upon the submissions of the landlords, I find the tenant was served notice of the landlords' hearing and the landlords' application as required by section 89(1) of the Act and the hearing proceeded on the landlords' application in the tenant's absence.

Thereafter the landlords were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

*Procedural matter*-Despite having his own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenant did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenant, without leave to reapply.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit, to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

#### Background and Evidence

The landlords supplied a written tenancy agreement showing that this tenancy began on December 30, 2013, that monthly rent is \$2000, and that the tenant paid a security deposit of \$500 at the beginning of the tenancy.

The landlords gave evidence that on February 2, 2014, they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, by leaving it personally with the tenant, listing unpaid rent of \$2000 as of February 1, 2014. The effective vacancy date listed on the Notice was February 12, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The tenant did file his application to dispute the Notice, but not within 5 days of receiving it as his application was filed on February 11, 2014.

The landlords supplied evidence that since the Notice was issued to the tenant, there was a partial payment of \$900, and that their monetary claim has been increased to \$3100, as per their amended application, as the tenant remained in the rental unit until sometime in later March 2014, without paying rent.

The landlords submitted that although they believed the tenant had vacated the rental unit, their request for an order of possession for the rental unit remained, out of an abundance of caution.

### Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the landlords submitted sufficient evidence that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent within 5 days of receiving the Notice and did not vacate the rental unit. Additionally the tenant did not appear at the hearing in support of his own application. I find the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords are entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also accept that the tenant owes unpaid rent through the month of March 2014, due to remaining in the rental unit through the midpoint of March, in the amount of \$3100.

I also grant the landlords recovery of their filing fee of \$50.

I therefore find that the landlords are entitled to a monetary award in the amount of \$3150, comprised of outstanding rent of \$3100 through March 2014, and the \$50 filing fee paid by the landlords for this application.

### Conclusion

The tenant's application is dismissed due to his failure to attend the hearing and as I have granted the landlords' application.

The landlords' application is granted.

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. The order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it should become necessary.

At the landlords' request, I allow the landlords to retain the tenant's security deposit of \$500 in partial satisfaction of their monetary award of \$3150 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 \$2650, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after the order has been served upon him, 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: March 31, 2014

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Residential Tenancy Branch

