



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 15, 2014, by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for their application.

The Landlord provided affirmed testimony which indicates the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on January 16, 2014, by registered mail. Canada Post tracking receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on January 21, 2014, five days after it was mailed, in accordance with section 90 of the Act and I proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Have the Landlords regained possession of the rental unit?
2. Have the Landlords proven entitlement to monetary compensation in accordance with section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlords provide documentary evidence which included a copy of a written tenancy agreement that the parties executed for a month to month tenancy that commenced on May 8, 2013. The Tenant was required to pay rent of \$1,275.00 on the first of each month and on May 8, 2013 the Tenant paid \$637.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the December 2013 and January 2014 rent they worked to mitigate their losses and both parties agreed to enter

into a written mutual agreement to end the tenancy effective January 15, 2014. The Tenant also signed a document agreeing to have her security deposit applied to past due rent. A copy of the mutual agreement and security deposit agreement were provided in the Landlords' evidence. The Tenant vacated the unit by January 15, 2014; therefore, they withdrew their request for an Order of Possession.

The Landlords now seek to recover the unpaid rent of \$1,175.00 for December, \$1,275 for January 2014, plus the water and hydro utilities of \$1,286.72 from August 2013 to January 15, 2014, as supported by the invoices provided in their evidence. They argued that they agreed to end this tenancy mid January so they could try to re-rent the unit as soon as possible. As it turned out they had to clean the rental unit and were not able to re-rent it until March 1, 2014.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement, despite any disputes they may have with the landlord.

As this tenancy ended by mutual agreement, effective January 15, 2014, I find the Landlords have met the burden of proof to claim rent of \$1,175.00 for December 2013 plus \$637.50 for January 1 – 14, 2014 in the amount of **\$1,812.50**.

Section 7 of the Act provides that a party making the application did whatever was reasonable to minimize their damage or loss.

In this case the Landlords did not want to continue to lose money by having the Tenant stay there and not pay rent, while waiting for this hearing; so they did what they felt was necessary and agreed to end this tenancy in order to get a another tenant as soon as possible, who would pay the rent. They have since cleaned up the mess left by the Tenant and were able to re-rent the unit as of March 1, 2014.

Based on the above, I find the Landlords did what was reasonable to mitigate their loss by agreeing to end the tenancy January 15, 2014. Therefore, I grant them loss of rent for the rest of January 2014 in the amount of **\$637.50**.

The tenancy agreement provides that the Tenant is required to pay for water and hydro. The evidence supports the Tenant did not comply with the tenancy agreement as she did not pay for utilities from August 2013 to January 15, 2014. Accordingly, I award the Landlords compensation for unpaid utilities in the amount of **\$1,286.72**.

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent, December 2013 to January 14, 2014	\$1,812.50
Loss of rent January 15 – 31, 2014	637.50
Unpaid utilities	1,286.72
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,786.72</b>
<b>LESS:</b> Security Deposit \$637.00 + Interest 0.00	<u>-637.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,149.72</u></b>

### Conclusion

The Landlords withdrew their request for an Order of Possession.

The Landlords have been issued a Monetary Order in the amount of **\$3,149.72**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: March 10, 2014

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Residential Tenancy Branch

