



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF; CNR, MNDC, O, RR, FF

### Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

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.

The landlord testified that she personally served the tenant with the dispute resolution package on 11 December 2014. The tenant did not dispute receipt. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she personally served the tenant with the 10 Day Notice on 4 December 2014. The landlord provided me with a signed proof of service that set out the same. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for damages arising out of this tenancy? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in December 2013. The tenancy agreement is dated 21 October 2014 and sets out that monthly rent of \$1,350.00 is due on the first. The landlord continues to hold the tenant's security deposit of \$825.00, which was paid in or about December 2014.

The 10 Day Notice is dated 4 December 2014. The 10 Day Notice sets out that the tenant failed to pay \$1,650.00 of rent that was due on 1 December 2014. The 10 Day Notice sets out that the tenant must vacate the rental unit by 14 December 2014.

The landlord testified that she has not received any rent payments since 4 December 2014. The landlord testified that there is currently \$3,300.00 in rent arrears: \$1,650.00 for December 2013 and \$1,650.00 for January 2015.

The tenant testified that she did not pay her rent, but that she has a court settlement that she will receive soon and has several promising job leads. It appears from her application that this is the tenant's basis for her application.

The tenant did not provide any testimony in relation to her application for rent abatement. The tenant's application seeks damages in the amount of \$0.01.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find the tenant did not pay her rent when it was due or within the five days provided for pursuant to section 46. The tenant did not provide any evidence that would indicate that she was entitled to deduct any amount from rent. The tenant does not dispute that she has not paid her rent.

As the tenant is not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has proven that the tenant has \$3,300.00 in rental arrears as the tenant failed to pay rent for both December 2014 and January 2015. The landlord is entitled to those amounts.

The landlord applied to keep the tenant's security deposit in the amount of \$825.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

As this tenancy is ending and as the tenant did not present any relevant evidence in support of her, I dismiss the tenant's application without leave to reapply.

### Conclusion

I dismiss the tenant's application without leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 landlord's favour in the amount of \$2,525.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$1,650.00
Unpaid January Rent	1,650.00
Offset Security Deposit Amount	-825.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,525.00</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 12, 2015

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Residential Tenancy Branch

