



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOTAL INVESTMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on January 26, 2015.

The Landlord stated that on January 08, 2015 he personally served the Tenant with the Application for Dispute Resolution and the Notice of Hearing. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Landlord stated that on January 27, 2015 he faxed a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and Utilities and a letter from the Tenant to the Residential Tenancy Branch. The Landlord stated that he did not serve the Tenant with a copy of the Notice to End Tenancy as evidence for these proceedings, as he had already served it to her on November 09, 2014. The Landlord stated that he did not serve the Tenant with a copy of the letter from the Tenant, as the Tenant gave it to him on January 26, 2015. As these documents have not been served to the Tenant as evidence for these proceedings, as is required by Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, the evidence has not been accepted as evidence for these proceedings.

Residential Tenancy Branch Rules of Procedure require each party to provide the other party with documents they wish to rely on the hearing even if they have been previously provided to the other party. It is not enough to simply assume the Tenant is still in possession of documents that have previously been given her or to assume the Tenant has kept a copy of document(s) she has given the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or utilities?

Background and Evidence

The Landlord stated that this tenancy began on July 15, 2014; that the Tenant was required to pay monthly rent of \$950.00 by the first day of each month; and that the Tenant paid a security deposit of \$425.00.

The Landlord stated that the Tenant did not pay any rent for November of 2014, December of 2014, or January of 2015. He is seeking compensation for unpaid rent/lost revenue for these months.

The Landlord stated that on November 09, 2014 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities, which had a declared effective date of November 19, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$950.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for November of 2014. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$950.00 in outstanding rent for November of 2014.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities was personally served to the Tenant on November 09, 2014, which declared that the Tenant must vacate the rental unit by November 19, 2014.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, and I therefore find that the Tenant accepted that the tenancy ended on November 19, 2014.

As the Tenant did not vacate the rental unit on November 19, 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for

the period between November 20, 2014 and November 30, 2014, I find that the Landlord has been fully compensated for that period.

I also find that the Tenant must pay rent for the entire month of December, in the amount of \$950.00, as she remained in possession of the rental unit for that month.

I also find that the Tenant must pay rent for the 26 days in January that she retained possession of the rental unit, at a daily rate of \$30.65, which equates to \$796.90.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for the remainder of January. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience for the remainder of January, which is \$153.10.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,900.00, which is comprised of \$2,850.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$425.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,475.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: January 28, 2015

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Residential Tenancy Branch

