



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE MANAGEMENT @ LOGAN VILLA  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 12, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent (hereinafter referred to as the Landlord) who provided affirmed testimony.

The Landlord provided documentary evidence that the Tenant was personally served notice of this application and this hearing on January 14, 2015 which included a proof of service document that the Tenant signed acknowledging receipt of the hearing documents. Based on the submissions of the Landlord, I find the Tenant was sufficiently served with Notice of this hearing, pursuant to Section 89 of the Act; and I proceeded in absence of the Tenant.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term tenancy that began on February 6, 2014 that was scheduled to switch to a month to month tenancy after January 31, 2015. Rent of \$985.00 was due on or before the first of each month and on January 28, 2014 the Tenant paid \$492.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay the December 1, 2014 rent the Landlord personally served the Tenant with a 10 Day Notice on December 17, 2014, in the presence of a witness.

The Landlord submitted that when the Tenant failed to pay the January 2015 rent they found a new tenant and entered into a new tenancy effective February 1, 2015. The Landlord stated that the Tenant vacated the rental unit before the end of January, leaving several possessions behind. As such the Landlord no longer requires an Order of Possession and seeks the Monetary Order for December 2014 and January 2015 rent.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on December 17, 2014, and the effective date of the Notice is December 27, 2014. The Tenant neither paid the rent nor disputed the Notice; and he vacated the rental unit sometime before the end of January 2015. The Landlord re-rented the unit effective February 1, 2015. Accordingly, the Landlord no longer requires an Order of Possession.

The Landlord claimed unpaid rent of \$985.00 that was due December 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for December 1, 2014, in the amount of **\$985.00**.

As noted above this tenancy ended **December 27, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for January 2015. The Landlord did not regain possession of the unit until the end of January 2015; therefore, I grant the Landlord loss of rent for the entire month of January 2015, in the amount of **\$985.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is 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 Tenant's security deposit plus interest as follows:

Unpaid December 2014 Rent	\$ 985.00
Use and Occupancy January 2015	985.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,050.00
<b>LESS:</b> Security Deposit \$492.50 + Interest 0.00	<u>-492.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,527.50</u></b>

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,527.50**. 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: February 03, 2015

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Residential Tenancy Branch

