



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on January 19, 2015 and amended on January 22, 2015. Upon review of the amended application the Landlords stated they wished to withdraw their request for an Order of Possession and their request to offset against the security deposit or keep the deposit as partial satisfaction for their claim. Accordingly, I granted those withdrawals and proceeded to hear the matters pertaining to the Landlords' request for a Monetary Order for unpaid, 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 Landlords who gave affirmed testimony that they personally served the Tenant with Notice of their application and hearing documents on January 24, 2015. Based on the submissions from the Landlords I found that the Tenant was sufficiently served notice of this proceeding and I continued in the Tenant's absence.

### Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order?

### Background and Evidence

The Landlords submitted that they purchased the rental property as of December 2013 and that the Tenant occupied the rental unit in September 2013 based on a tenancy she entered into with the previous owner. The new owners did not enter into a new written tenancy agreement with the Tenant as they verbally agreed to continue with the tenancy based on the previous terms. Rent began at \$900.00 per month and was reduced to \$850.00 effective April 2014. On or before September 2013 the Tenant paid \$450.00 as the security deposit.

The Landlords testified that when the Tenant failed to pay the January 1, 2015 rent they posted a 10 Day Notice to her door on January 7, 2015 for \$850.00 rent that was due on January 1, 2015. The Tenant vacated the rental unit as of January 24, 2015, leaving

the keys outside of the rental unit. The Landlords stated that they received a text message from the Tenant on January 25, 2015 advising them of the location of the keys.

The Landlords submitted that they were able to re-rent the unit effective February 16, 2015. As such they were seeking the unpaid rent of \$850.00 for January 2015 plus \$425.00 for loss of rent for February 1 – 15, 2015.

### Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 is deemed to have received the 10 Day Notice on January 10, 2015, three days after it was posted to the door, and the effective date of the Notice is January 20, 2015, pursuant to sections 46 and 90 of the Act.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 20, 2015**, and was required to vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. The Tenant vacated the unit January 24, 2015.

The Landlords claimed unpaid rent of \$850.00 that was due January 1, 2015, 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 Landlords unpaid rent for January 1, 2015, in the amount of **\$850.00**.

As noted above this tenancy ended **January 20, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for loss of rent for the unit and not rent for the period of February 1 – 15, 2015. The Landlords re-rented the unit effective February 16, 2015; therefore, I award the Landlords loss of rent for February 1 – 15, 2015, in the amount of **\$425.00**.

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

Conclusion

The Landlords have been awarded a Monetary Order for **\$1,325.00** (\$850.00 + \$425.00 + \$50.00). 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 16, 2015

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Residential Tenancy Branch

