



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the tenants by placing it in the mail slot on February 3, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside on February 12, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 15, 2014. The rent is \$1100 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$550 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of January 2015 (\$100 is owed), February (\$1100 is owed) and March (\$550 is owed for the period March 1, 2015 to March 15, 2015) and the sum of \$1750 remains owing. The tenant(s) have remained in the rental unit.

The tenant testified that he refused to pay the rent because the landlord failed finish the basement as he had promised. The landlord denied he made such a promise.

Section 26(1) of the Residential Tenancy Act provides as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. The tenants do not have a right to withhold the rent unless they have first obtained an order from an arbitrator permitting such a withholding. Accordingly, I granted the landlord an Order for Possession March 15, 2015..

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of January 2015 (\$100 is owed), February (\$1100 is owed) and March (\$550 is owed for the period March 1, 2015 to March 15, 2015) and the sum of \$1750 remains owing. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$1750 plus the sum of \$50 in respect of the filing fee for a total of \$1800.

Security Deposit

I determined the security deposit plus interest totals the sum of \$550. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 05, 2015

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Residential Tenancy Branch

