



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR

For the landlord: MNDS, OPR, MNDC, MNR, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The landlords applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and for unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlords attended the hearing; the tenant did not attend.

The landlord stated that they served the tenant their application for dispute resolution and notice of hearing letter by registered mail on February 20, 2015, the day following their application being filed.

Based upon the landlords' submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlords' application in the tenant's absence.

Thereafter the landlords were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

*Procedural matter*-Despite having her own application for dispute resolution set for hearing on this date and time, the application of the landlords and the Notices of these Hearings, the tenant did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenant, without leave to reapply.

*Procedural matter #2*-The landlord submitted that the tenant vacated the rental unit on February 28, 2015, and that an order of possession for the rental unit was no longer requested. I therefore amend their application removing their request.

#### Issue(s) to be Decided

Are the landlords entitled to monetary compensation and for recovery of the filing fee paid for this application?

#### Background and Evidence

The written tenancy agreement submitted by the landlords show that this 1 month, fixed term tenancy began on February 1, 2015, that the tenancy was to end by February 28, 2015, that the tenant was required to vacate the rental unit at the end of the fixed term, and that monthly rent was \$1600.00. The written tenancy agreement shows that the tenant did not pay a security deposit.

The landlords submitted that they served the tenant with the Notice on February 10, 2015, by placing the Notice in the tenant's mail slot. The Notice listed unpaid rent of \$1600.00 that was due on February 1, 2015 and an effective move-out date of February 20, 2015.

Section 90 of the Act states that documents served by placing the mail slot are deemed delivered 3 days later. Thus the tenant was deemed to have received the Notice on February 13, 2015, and the effective move out date is automatically changed to February 23, 2015, pursuant to section 53 of the Act.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained that alternatively the tenant had 5 days to dispute the Notice by making an application for dispute resolution.

The landlords asserted that since the issuance of the Notice, the tenant did not pay the rent owed prior to vacating on February 28, 2015.

The landlords' monetary claim listed on their application was \$3200.00; however, this amount was in contemplation of the tenant still being in the rental unit in March 2015. As the tenant vacated the rental unit by February 28, the landlords agreed their monetary claim for unpaid rent should be reduced to \$1600.00.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Based upon the landlords' undisputed evidence, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, that she owed the amount listed on the Notice as unpaid rent when it was served, and that she failed to pay this rent prior to vacating.

I therefore find that the landlords are entitled to a monetary award of \$1650.00, comprised of outstanding rent of \$1600.00 for February 2015 and the \$50.00 filing fee paid by the landlords for this application, which I have granted them.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1650.00, which is enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords' application for a monetary order for unpaid rent has been granted.

The tenant's application is dismissed, without leave to reapply, as she failed to attend the hearing and as I have granted the landlords' application.

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 12, 2015

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Residential Tenancy Branch

