



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation unpaid rent and unpaid rent and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that she served the tenant with the application for dispute resolution and notice of hearing by registered mail on May 11, 2015. The landlord stated that her online search of the Canada Post website shows that the tenant collected the registered mail.

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

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary 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.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and to recovery of the filing fee paid for this application?

### Background and Evidence

The landlord submitted that this tenancy began on September 1, 2013, and that monthly rent was \$1400.00.

The landlord submitted further that she issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property ("Notice") on September 29, 2015, by leaving the Notice with an adult who apparently lived with the tenant. The Notice listed an effective move-out date of November 30, 2015. The landlord submitted that in conjunction with the Notice, she provided the tenant a payment equivalent to 1 month's rent.

The landlord submitted that she did not know when the tenant or his subtenants vacated the rental unit, but that it was sometime in November, having taken repossession of the rental unit at the end of November.

The landlord submitted that although the tenant paid the November 2014 rent by cheque, the cheque was later dishonoured by the tenant's bank, having been declared to be counterfeit by the tenant. In explanation, the landlord submitted that the funds for the November 2014, rent were withdrawn from her account, when the cheque was declared counterfeit and that her bank had no explanation of why this occurred.

The landlord's relevant evidence included a copy of the Notice, email communication between the parties, and email communication between the landlord and her bank.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

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. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I find that under the terms of the tenancy agreement and the Notice issued by the landlord, the tenant was obligated to pay rent through November 2014, and failed to pay rent for the last month of the tenancy, or November 2014, when he declared the rent cheque was counterfeit, causing the funds to be withdrawn from the landlord's account.

I therefore find that the landlord is entitled to a monetary award of \$1450.00, comprised of unpaid rent of \$1400.00 for November 2014, due to the tenant's breach of section 26 of the Act, and the \$50.00 filing fee paid by the landlord for this application, which I have granted them pursuant to section 72(1) of the Act.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$1450.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon them, 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 landlord's application has been successful, as they have been granted a monetary award of \$1500.00, comprised of unpaid rent for November 2014 and the filing fee of \$50.00.

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: October 19, 2015

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Residential Tenancy Branch

