



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353178 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant: RP, ERP, MNSD, DRI, CNR, RR, MNDC, LRE, FF  
For the landlord: OPR, 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 ("Act").

The tenant applied for an order requiring the landlord to make repairs and emergency repairs to the rental unit, a monetary order for a return of her security deposit, to dispute an additional rent increase, an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, an order suspending or setting conditions on the landlord's right to enter the rental unit, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (hereafter "landlord") attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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.

*Preliminary matter-* The tenant submitted that she has vacated the rental unit, as of the end of November, 2015, although she was not clear of the exact date, as she continually mentioned that she moved out on November 31, 2015. The landlord submitted that the tenant moved out by December 31, 2015. As there was no disagreement that the tenancy was over by the date of the hearing, I determined that

the issues for an order of possession or cancellation of the Notice was no longer necessary for consideration. I have therefore excluded the requests of the respective parties for such relief.

Additionally, the landlord submitted that until he filed his application for dispute resolution, he was unaware that the tenant had filed an application, as it was not received. The tenant countered that she dropped off her application in the landlord's mailbox on the residential property, just as she does her rent cheques.

I find the tenant has not complied with section 89(1) of the Act in serving her application to the landlord, and I dismiss the tenant's application seeking monetary compensation and for a return of her security deposit, with leave to reapply.

As to the remainder of tenant's application, I dismiss those requests, without leave to reapply, as the tenancy has now ended.

The tenant confirmed that she had received the landlord's application.

#### Issue(s) to be Decided

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

#### Background and Evidence

The undisputed evidence was that this tenancy began on August 1, 2014, that monthly rent at the start of the tenancy was \$760.00, and that monthly rent had increased to \$775.00.

The landlord submitted that he served the tenant with the Notice on November 2, 2015, by attaching the document to the tenant's door, listing unpaid rent of \$775.00 owing, and an effective end of tenancy date of November 12, 2015. The landlord submitted a copy of the Notice into evidence.

Section 90 of the Act states that documents served by attaching to the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on November 5, 2015, and the effective move out date is automatically changed to November 15, 2015, pursuant to section 53 of the Act.

The Notice informed the tenant that she had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not any rent through the date the tenancy ended on December 31, 2015. The landlord's monetary claim listed on their application is \$775.00 for unpaid rent through November 2015.

Although the landlord submitted documentary evidence seeking non-payment of rent for December 2015, and late fees, the landlord's application was not amended to include an increased amount. I have therefore not considered the landlord's claim for the unpaid rent for December and additional fees.

The tenant provided no dispute that the rent to the landlords' evidence.

### 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. When a tenant fails to pay rent by the date it is due, the landlord may serve the tenant with a Notice under section 46 of the Act.

In the case before me, although the tenant filed an application to dispute the Notice within the 5 days allowed under 46(4) of the Act, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued, that she did not pay all of the rent owed to the landlord within five days of receiving the Notice, and did not demonstrate that she had a legal right to withhold rent.

I therefore find that the landlord has submitted sufficient evidence to substantiate that the tenant owed and failed to pay all rent due under the tenancy agreement for November 2015. The landlord may deduct the amount of the tenant's security deposit in partial satisfaction of their monetary award, at their choosing.

I therefore find that the landlord is entitled to a monetary award of \$825.00, comprised of unpaid rent of \$775.00 for November 2015 and the \$50.00 filing fee paid by the landlords for this application.

The landlord is at liberty to reapply for further monetary compensation such as was included in their additional evidence.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award, in the amount of \$825.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, 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 for a monetary award has been granted.

The tenant's application seeking cancellation of the Notice and orders for the landlord is dismissed, without leave to reapply, as the tenancy was over prior to the hearing.

The portion of the tenant's application seeking monetary compensation and a return of their security deposit was dismissed, with leave to reapply. If the landlord chooses to deduct the tenant's security deposit in partial satisfaction of their monetary award, the tenant may not make a claim for its return.

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: January 6, 2016

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Residential Tenancy Branch

