



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNSD, 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 an order of possession for the rental unit due to alleged cause, monetary order for unpaid rent, for authority to retain the tenant's security deposit, 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 December 4, 2015.

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.

### *Preliminary matter-*

The landlord submitted that the tenant had vacated the rental unit; I have therefore excluded her request for an order of possession for the rental unit.

### 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 1 year, fixed term tenancy began on July 1, 2015, and that monthly rent was \$850.00. The landlord submitted a copy of the written tenancy agreements.

The landlord submitted that she served the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice") on or about October 22, 2015, for an effective end of tenancy date of November 30, 2015. The landlord submitted a copy of the Notice.

The landlord submitted that she did not know when the tenant vacated the rental unit, but that it was without notice, verified when she attended the rental unit on December 8, 2015.

The landlord submitted that the tenant did not pay rent for November or December 2015, and therefore has claimed this unpaid rent for November and December 2015. The landlord also claimed for unpaid rent for January and June 2016.

The landlord's additional relevant evidence included a copy proof that the rent for November was returned due to non-sufficient funds.

### 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, the tenant was obligated to pay rent on November 1, 2015, and failed to pay. I therefore approve the landlord's monetary claim for \$850.00 for November 2015.

As to the landlord's claim for rent for December 2015, I find the tenancy ended by November 30, 2015, pursuant to the Notice, and that she failed to ensure that he had vacated by that date. I therefore find the landlord submitted insufficient evidence to show that the tenant still resided in the rental unit on December 1, 2015, when he would be overholding, and I therefore dismiss her claim for unpaid rent for December 2015.

As to the landlord's claim for loss of rent revenue for January and February 2016, I find this claim was premature at the time of hearing, and it is dismissed, with leave to reapply.

Due to the above, I therefore find that the landlord is entitled to a monetary award of \$900.00, comprised of unpaid rent of \$850.00 for November 2015, 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 \$900.00, 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 partially successful, as she has been granted a monetary award of \$900.00, comprised of unpaid rent for November 2015 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: January 11, 2016

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Residential Tenancy Branch

