



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC SKYLINE CONSTRUCTION AND DEVELOPMENT AND  
VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR OPR MNSD FF

### **Introduction:**

Both landlord and tenant made Applications pursuant to the *Residential Tenancy Act* (the Act) and attended the hearing. The tenant confirmed personal receipt of the Notice to End Tenancy dated January 7, 2016 to be effective January 18, 2016 and receipt by registered mail of the landlord's Application. The tenant's Application was filed January 15, 2016 which I find is out of time to dispute the Notice to End Tenancy according to section 46 of the Act which states a 5 day limit to either pay the outstanding rent or file an Application to Dispute the Notice. The landlord applies for an Order of Possession and a Monetary Order for rental arrears and filing fee.

### **Preliminary Issue:**

The landlord requests an amendment of the landlord company's legal name to substitute one word. The tenant had no objection. I find this was a minor change and I grant the amendment.

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and submissions. The undisputed evidence is that the tenancy commenced August 1, 2015 and rent is \$1600 a month. There is a dispute as to whether or not a security deposit was paid. The tenant said he and his room mate paid a total of \$400 through a cheque from the Ministry to a person from whom they sublet. He has no receipt. The present landlord said they received nothing. The landlord claims \$8681.74 in rent and utility arrears as follows:

Rent for November 2015(\$1250) and December 2015 (\$1600)= \$2850

Rent from January to March 2016 (\$1600 x 3)= \$4800

Plus Utilities: \$1031.74

The tenant did not dispute these amounts but said they had expended money on emergency repairs due to black mold. He could not remember the exact amount but said it was between \$1700 to \$1800 paid in November to R.M. No receipt is in evidence. He said his room mate is in hospital due to black mold problems and he has had many hospital visits too. He said he had a right to with hold this amount from his rent.

In evidence is the 10 day Notice to End Tenancy, a Notice given by the tenant saying they would vacate on December 31, 2015, the tenancy agreement, registered mail receipts and a hand written note on the back of the tenancy agreement noting the unit is clean and safe

**Analysis:**

As discussed with the parties in the hearing, section 26 of the Act states a tenant must pay rent when due whether or not the landlord fulfills their obligations under the Act. Section 46 provides that a landlord may serve a 10 Day Notice to End Tenancy any day after the rent is due and unpaid. Section 46(4) states that a tenant must either pay the rent or dispute the notice within 5 days. I find this tenant did not pay the rent and did not dispute within 5 days. He filed his Application to Dispute after 8 days. As provided in section 46(5) in this case, the tenant is presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit. I find the landlord entitled to an Order of Possession effective two days from service. The landlord agreed to serve it by posting it on the door which will effectively allow the tenant about 5 days to vacate.

**Monetary Order:**

I find the landlord entitled to a monetary order for \$8681.74 for rental arrears, utilities and over holding rent plus the filing fee of \$100.

In respect to the tenant's submission that he paid for emergency repairs, I find insufficient evidence that he followed the procedure set out in section 33 of the Act by notifying the landlord that repairs were needed, giving the landlord reasonable time to do them and then when they were not done, paying himself to have them done. I find insufficient evidence that he paid for repairs himself. I also find insufficient evidence that the tenant paid a security deposit as he provided no receipt and the tenancy agreement does not note any security deposit. I dismiss the tenant's Application and give him leave to reapply for reimbursement for emergency repairs and credit for any security deposit. I note the agent attending for the landlord requested him to send any evidence to them and they would make the landlord aware of it and try to resolve it.

**Conclusion:**

I dismiss the Application of the tenant and give him leave to reapply for reimbursement or credit for monies paid for emergency repairs and/or a security deposit.

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order for \$8781.74 including reimbursement of the \$100 filing fee.

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 02, 2016

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Residential Tenancy Branch

