



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNSD, MNR, MNDC, MND, FF**

### Introduction

This was a cross-application hearing.

On January 15, 2016 the tenant applied to cancel a 10 day notice to end tenancy that was issued on December 1, 2015.

On January 21, 2016 the landlord applied requesting compensation for damage to the rental unit, damage or loss under the Act and unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord supplied a copy of a Canada Post receipt and tracking number for registered mail sent to the tenant on January 27, 2016. The landlord served the tenant the hearing documents and evidence to the tenants' rental unit address.

Therefore, I find that the tenant was served with the hearing documents effective the fifth day after mailing, February 1, 2016; in accordance with section 89 and 90 of the Act.

The tenant did not attend the hearing in support of her application.

### Preliminary Matters

The landlords' application indicated a total monetary claim in the sum of \$4,134.42. The application included a claim for unpaid rent; a breakdown of this portion of the claim was not supplied. A monetary worksheet set out the cost of painting in the sum of \$1,454.25.

I explained that in order to consider the total monetary claim made the respondent must be served with a detailed calculation of the sum claimed. This requirement is set out in section 2.5 of the Residential Tenancy Branch Rules of Procedure:

### ***2.5 Documents that must be submitted with an Application for Dispute Resolution***

*To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:*

- *a detailed calculation of any monetary claim being made;*
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on at the hearing.*

Therefore, in the absence of a detailed calculation for costs, outside of painting, I considered the claim for painting.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

***4.2 Amending an application at the hearing***

*In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

As rent and late fees are basic terms of any tenancy agreement I have amended the application to include a claim for unpaid rent and late fees.

The landlord made a previous application via the Direct Request Proceeding process and obtained an Order of possession. The landlord obtained a writ of possession and the tenant was moved out by a bailiff on February 26, 2016. The landlord now has possession of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and late fees?

Is the landlord entitled to compensation for the cost of painting?

Background and Evidence

The tenancy commenced on November 1, 2015. Rent was \$1,180.00 per month, due on the first day of each month. A copy of the tenancy agreement and addendum were supplied as evidence. The addendum imposed a \$20.00 late rent fee. The landlord is holding a security deposit in the sum of \$590.00.

The landlord submitted copies of communication with the tenant. The tenant painted rooms in the house. The landlord replied to the tenant that the tenant must obtain written permission to paint and the tenant responded that paint was needed. The

landlord asked if the tenant had painted in the same colour; she had not. The tenant said that she would be willing to repaint when and if she left the unit.

The landlord supplied a January 25, 2016 quote in the sum of \$1,454.25 for repair of some damage to drywall in the three bedrooms and to repaint the three bedrooms.

The landlord received direct payment from a government ministry each month in the sum of \$925.58. The tenant was to pay an additional \$254.42 each month for the balance of rent owed. The tenant did not pay that amount after November 2015. The tenant owes the landlord \$763.26 for rent from December 2015 to February 2016, inclusive.

The landlord referenced a decision issued on January 13, 2016 which determined that the tenancy ended effective December 17, 2015. The landlord had applied for dispute resolution via the direct request proceeding process.

The landlord has requested late rent payments for each month that the rent was not paid, totaling \$60.00.

### Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent and per diem rent in the amount of \$763.26 from December 2015 to February 2016, inclusive. Once the tenancy ended effective December 17, 2015 the tenant was required to pay a per diem rent. I have accepted that the landlord suffered a loss of rent revenue to the end of February as the tenant was not removed from the rental unit until February 26, 2016, in response to the landlord's attempts to mitigate his loss by hiring a bailiff to enforce an Order of possession.

As the tenancy ended effective December 17, 2015 I find that the landlord is entitled to a late fee for that month only. Per diem rent was then owed and late fees would not be applied to rent owed on a daily basis. Therefore, the claim for January and February 2016 late fees are dismissed.

In the absence of the tenant who was served with Notice of this hearing I find that the landlord is entitled to the cost of repainting in the sum of \$1,454.25; supported by the quote supplied as evidence. The claim was unopposed by the tenant.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$590.00, in partial satisfaction of the monetary claim.

As the landlords' claim has merit I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,747.51. In the event that the tenant does not comply with this Order, it may be

served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for unpaid rent and per diem rent from December 2015 to February 2016, inclusive.

The landlord is entitled to painting costs.

The landlord is entitled to a late rent fee for December 2015; the balance of this portion of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 07, 2016

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Residential Tenancy Branch