



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0588848 BC LTD. & RALPH WILLIAM MCMANUS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LANDLORD: OPR, MNR, MNSD, MNDC, FF  
TENANT: CNC

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and for compensation for loss or damage, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on January 25, 2016 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail and personal delivery on February 10, 2016 and the amended application on February 22, 2016 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit as partial payment of the unpaid rent?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on April 1, 2014 as a fixed term tenancy with an expiry date of September 30, 2014 and then continued on a month to month basis. Rent is \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 in March, 2014.

The Landlord said that the Tenant did not pay rent of \$975.00 for the month of January 2016, when it was due and as a result, on January 5, 2016, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2016, on the door of the Tenant's rental unit. The Landlord continued to say the Tenant paid the January, 2016 rent late and now has unpaid rent for February and March, 2016 for \$900.00 per month for a total of \$1,800.00. The Landlord said he wants to end the tenancy and he requested an Order of Possession for as soon as possible.

The Tenant said she paid the January, 2016 rent on February 1, 2016 and the Tenant agreed the February and March, 2016 rent is unpaid in the amount of \$1,800.00. The Tenant said she did not pay the rent because the Landlord has not made repairs to the rental complex that have been requested by the tenants.

The Landlord also said he is seeking to recover the \$100.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,800.00 in unpaid rent and the \$100.00 filing fee for a total claim of \$1,900.00.

The Tenant said she has not paid the rent for February and March, 2016, but she would like to work out a payment arrangement with the Landlord. The Landlord said he is not interested unless the Tenant can pay all the unpaid rent immediately. The Tenant said she can pay \$700.00 by March 11, 2016 and \$1,100.00 by March 25, 2016. The Landlord denied the Tenant's offer.

The Landlord said in closing that he wants to end the tenancy as soon as possible.

The Tenant said she understands that if she does not pay the rent a tenancy will end.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the Notice to End Tenancy is dismissed as the Tenant agrees there is unpaid rent in the amount of \$1,800.00. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for the months of February and March, 2016 in the amount of \$1,800.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of unpaid rent. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,800.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$1,900.00
Less:	Security Deposit	\$450.00	
	Subtotal:		\$ 450.00
	Balance Owing		\$1,450.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,450.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 08, 2016

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Residential Tenancy Branch