



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPR MNR MNSD FF
	Tenant:	CNR RR FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application is dated March 13, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an order permitting the Landlord to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant's Application was received at the Residential Tenancy Branch on March 3, 2017 (the “Tenant's Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The parties attended the hearing on their own behalves and provided affirmed testimony.

The Landlord testified her Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant, in person with a witness present, on March 14, 2017. The Tenant acknowledged receipt. I find the Landlord's Application package was received by the Tenant on March 14, 2017.

The Tenant testified his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by leaving a copy with the Landlord's husband, in person with a witness present, on March 7, 2017. The Landlord acknowledged receipt. I find the Tenant's Application package was received by the Landlord on March 7, 2017.

The parties were represented at the hearing and were prepared to proceed. Neither party raised any issue with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

During the hearing, the parties confirmed the Tenant vacated the rental unit and returned the keys to the Landlord on March 31, 2017. Accordingly, the Landlord confirmed she no longer requires an order of possession. Similarly, the Tenant confirmed he no longer requires an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 1, 2017 (the "10 Day Notice"). Accordingly, I have not considered this aspect of the parties' applications further in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to an order reducing rent for repairs, services or facilities agreed upon but not provided?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began in or about July 2013. The Tenant vacated the rental unit on March 31, 2017. Further, the parties acknowledged that rent was due on the last day of each month and was applied to the following month.

The amount of rent is in dispute. According to the Landlord, rent has not been paid for March and April 2017. Rent for March 2017 was \$928.00. In support, she provided a copy of a Notice Terminating or Restricting a Service or Facility, dated February 13, 2017 (the "Service Notice"), which advised that shared laundry services would no longer be available. Pursuant the Service Notice, rent was reduced from \$928.00 per month to \$910.00 per month, effective March 14, 2017. The Tenant paid a security deposit of \$445.00, which the Landlord has retained.

According to the Landlord, the Tenant did not pay rent when due on February 29, 2017 (for March 2017). She sought to recover \$919.00 on the basis that the rent reduction was effective in the middle of the month and pro-rated the reduction. Because rent was not paid when due, the Landlord issued the 10 Day Notice. As indicated on the 10 Day Notice, it was served by posting a copy to the door of the Tenant's rental unit on March 1, 2017. The Tenant's Application disputing the 10 Day Notice was received at the Residential Tenancy Branch two days later on March 3, 2017.

The Landlord further testified that rent in the amount of \$910.00 was not paid when due on March 31, 2017 (for April 2017). Although the Tenant vacated the rental unit on March 31, 2017, she advised that she did not receive notice of his departure. As a result, she has been unable to rent the unit for the month of April 2017. The Landlord confirmed that rent in the amount of \$1,829.00 remains unpaid.

The Tenant acknowledged that he withheld rent as claimed by the Landlord. He testified this was because of a number of issues that arose during the tenancy as the relationship between the parties deteriorated. He also indicated he disagreed with the amount of the rent reduction and claimed it was not enough to offset the cost of doing laundry at a laundromat. Further, the Tenant disagreed with the Landlord's assertion she was not provided with notice of the Tenant's intention to leave on March 31, 2017, and testified that he provided the Landlords with notice of his intention to move out on the date he received the Service Notice, although there was no documentary evidence to this effect.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days to either pay rent or file an application for dispute resolution. The Tenant submitted his Application to dispute the 10 Day Notice in time. However, the Tenant acknowledged that rent has been withheld as alleged by the Landlord. Although the Tenant submitted that rent was withheld for the reasons outlined above, I find there is insufficient evidence before me to conclude the Tenant had a right to do so. Again, section 26 of the *Act* confirms that rent is to be paid when due, whether or not the landlord complies with the *Act*, the Regulations or a tenancy agreement.

As the Tenant did not pay rent when due, I am satisfied that rent in the amount of \$1,829.00 remains unpaid, and grant the Landlord this amount. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. The Landlord also wished to apply the security deposit to any monetary award granted, which I allow.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,484.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,829.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$455.00)
<b>TOTAL:</b>	<b>\$1,484.00</b>

The Tenant's Application is dismissed.

Conclusion

The Landlord is granted a monetary order in the amount of \$1,484.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed.

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: April 4, 2017

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Residential Tenancy Branch