



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rancho Management Services (B.C.)  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNR-MT**

**OPR-DR, MNR-DR, FFL**

### **Introduction**

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”).

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlords were represented at the hearing by property manager, JR (“landlord”). As both parties were present, service of documents was confirmed. Both parties acknowledged service of the other’s Notice of Dispute Resolution Proceedings package and did not raise any concerns with timely service of documents.

### **Preliminary Issue**

The property management company, the landlord named on the notice to end tenancy, has **Ltd.** at the end of their name. Pursuant to section 64(3), I amended the tenant’s application so that the property management company name matched the property management company as shown on the notice to end tenancy. Both the corrected

property management name and the owners of the property are listed as landlords on the cover page of this decision.

The parties agree that the tenant vacated the rental unit on February 28, 2022. As such, the tenant's application seeking to dispute the notice to end tenancy and the landlord's application seeking an Order of Possession are dismissed pursuant to section 62(3) of the Act as there are no reasonable grounds for these portions of their applications.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on January 1, 2017. As of December, 2021, rent was \$2,405.00 per month after multiple rent increases over the years.

The landlord testified that the tenant paid rent for the month of November but did not pay December's rent. A 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was served. The landlord testified that December's rent was never paid.

The landlord acknowledges the tenant paid rent for the month of January on January 18, 2022. During the hearing, the landlord reviewed his receipt book and noted the tenant paid that rent in cash and he gave her a receipt. There are no other receipts in the landlord's receipt book indicating cash payments for this tenant. The landlord further testified that the tenant had been paying rent via pre-authorized debit prior to defaulting in December.

The tenant sent the landlord a text on February 24, 2022 asking when would be a good time and date for a condition inspection report at the end of the tenancy. The tenancy ended on February 28<sup>th</sup> and the tenant never made any payments for February's rent. The landlord seeks compensation for December, 2021 and February 2022 rent.

The tenant testified that a payment of December's rent was made at the property manager's house on or about January 16<sup>th</sup>. The tenant gave conflicting testimony regarding this incident. First, the tenant testified that she handed the property manager \$2,405.00 cash and then walked away without getting a receipt from the property manager because she was embarrassed that her rent was late. Then, the tenant

testified that she got a receipt for this payment, but it got lost. During the hearing, the tenant acknowledged that it's possible the property manager applied this payment to January's rent, not the outstanding rent from December. The tenant testified she was always a month behind on rent.

The tenant testified that the landlord came to the rental unit on or about February 14<sup>th</sup> and the tenant gave the landlord cash. The tenant testified she was given a receipt for this payment; however, she lost the receipt during her move. Her son saw the payment; however the tenant did not call her son to testify for this hearing. The landlord denies ever attending the tenant's rental unit on this date. He never received a cash payment from the tenant and there is no indication in his receipt book to corroborate the tenant's version of events.

At the end of her testimony, the tenant was offered the opportunity to call her witness. The tenant declined the offer.

#### Analysis

I find that the tenancy ended on February 28, 2022, the date the tenant vacated the rental unit pursuant to section 44(1)(f) of the Act.

Section 26 of the Act states:

#### **Rules about payment and non-payment of rent**

**26** (1)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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

In the case before me, the landlord has the onus to prove that the tenant did not pay rent for the months of December and February. I find that the landlord has provided sufficient evidence to satisfy me this is the case. The landlord gave clear, unwavering testimony that he never received December's rent subsequent to serving the notice to end tenancy. I find the landlord to be forthright and credible when he acknowledges he received a cash rent payment on January 18<sup>th</sup> and provided a receipt to the tenant.

The tenant gave conflicting and confusing testimony regarding her recollection of events. At one point, the tenant states she “walked away” from the property manager after handing over \$2,405.00 in cash and never asked for a receipt. A reasonable person is not likely to do such a thing, no matter what their frame of mind is at the time. On a balance of probabilities, I find that the cash payment (with receipt) made on January 18<sup>th</sup> was applied to January’s rent by the property manager. As such, December’s rent remains unpaid.

I find little credibility in the tenant’s argument that the landlord came to her house on February 14<sup>th</sup> and gave the tenant a receipt for a cash payment which she has now lost. The tenant did not provide a witness to corroborate this version of events and the tenant acknowledged she has no documentary evidence to substantiate this claim. The landlord has clearly stated that he never came to the tenant’s house and never accepted a cash payment of rent from her in February. On a balance of probabilities, I do not accept that any rent was paid for February by the tenant.

Section 26 of the Act states that 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 the tenant failed to pay rent for the months of December 2021 and February, 2022. Pursuant to sections 26 and 67, the landlord is entitled to a monetary order for \$4,810.00 [ $\$2,405.00 \times 2 = \$4,810.00$ ].

As the landlord’s application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

The tenancy ended on February 28, 2022, the date the tenant vacated the rental unit pursuant to section 44(1)(f) of the Act.

I issue a monetary order in the landlord’s favour in the amount of \$4,910.00.

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: March 25, 2022

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Residential Tenancy Branch