



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

Although tenant CM did not appear, tenant DW represented the tenants at this hearing. The landlord gave evidence that tenant CM was served notice of the hearing and the landlord's application leaving the documents with the tenant.

I find the tenant CM was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act").

The hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

### Background and Evidence

I was provided evidence from the landlord that this tenancy began on October 1, 2011, ended on December 31, 2012, monthly rent was \$1250 and that the tenants did not pay a security deposit for this tenancy.

The landlord's monetary claim is in amount of \$1373, which includes unpaid rent of \$1250 for December 2012, and a water bill in the amount of \$123.18.

As to the water bill, the tenant agreed that this amount was owed

As to the unpaid rent, the landlord submitted that the tenants' rent cheque for December was dishonoured or refused, and that he failed to receive rent for December 2012.

In response, the tenant said that the tenants vacated the rental unit on December 19, and had an agreement with the landlord that they would owe rent for only the portion of the month that they resided in the rental unit.

In response to my question, the tenant said that the original notice to vacate was effective for December 31.

The tenant also submitted that they performed many renovations to the rental unit during the tenancy, including paying over \$2000 in costs, and did not receive compensation from the landlord.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In the case before me, the undisputed evidence of the landlord shows that the tenants owed rent on December 1, for the month of December, and the rent was not paid.

The tenants did not submit evidence that the parties had an agreement that the tenants would pay rent for only the portion of December the tenants were in the rental unit. Additionally, whether the parties had an agreement that the tenants were to be compensated for work performed, I find that this was not relevant for consideration of the landlord's application.

I therefore find the landlord is entitled to monetary award of \$1250 for unpaid rent for December 2012.

As the tenant agreed that the water bill was owed, I also find that the landlord is entitled to a monetary award of \$123.18.

I also allow the landlord recovery of the filing fee of \$50.00.

I find the landlord has established a total monetary claim in the amount of \$1423.18, comprised of unpaid rent for December 2012 in the amount of \$1250, the unpaid water bill of \$123.18, and recovery of the filing fee of \$50.00.

Pursuant to section 67 of the Act, I grant the landlord a final, legally binding monetary order in the amount of \$1423.18, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

### Conclusion

The landlord is granted a monetary order in the amount of \$1423.18.

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* and is being mailed to both the applicant and the respondents.

Dated: May 06, 2013

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Residential Tenancy Branch