



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPB MNR MNSD MNDC FF  
                             CNR MNDC OLC ERP FF

### Preliminary Issues

The Tenants affirmed that their initial application was filed on September 23, 2013. The Landlord then served a 10 Day Notice upon them so they came into the *Residential Tenancy Branch* on October 7, 2013, and amended the application to include a request to cancel the Notice and served the Landlord an amended copy.

During the course of this proceeding the Tenants affirmed they were vacating the property the day of this proceeding, November 1, 2013, in accordance with their notice to end tenancy that was served upon the Landlord on October 1, 2013.

Based on the above the majority of items applied for on the Tenants' application were now moot, as they were vacating the property. Accordingly, I dismissed the request to cancel the Notice and to order the Landlord to make repairs. I proceeded to hear the merits of their request for compensation for damage or loss under the Act, regulation, tenancy agreement and have the Landlord comply with the Act.

Upon review of the Landlord's application I found the Landlord's request to keep the security deposit and claim for November 2013 unpaid rent to be premature because at the time they filed this application this tenancy had not ended. I grant the Landlord liberty to file a future claim if he suffers further loss as the result of this tenancy.

The Landlord affirmed that he was the person whom opened the registered mail received from the Tenants. Throughout the remainder of this proceeding the Landlord's Agent (hereinafter referred to as Agent) provided all of the testimony.

## Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent and for breach of an agreement with the Landlord. The Landlord also sought a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and an Order to have the Landlord comply with the Act.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenants affirmed receipt of the Landlord's evidence. The Landlord affirmed receipt of some of the Tenants' evidence and noted that they did not receive a copy of the Tenants' witness's letter. The Tenants stated the Landlord was served the same documents that the *Residential Tenancy Branch* was served.

Section 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that all evidence a party wishes to rely upon must be served to the *Residential Tenancy Branch* and the other party prior to the hearing. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as Landlord has not received copies of the Tenants' witness letter, I find that that evidence cannot be considered in my decision. I did however consider the Tenants' testimony pertaining to that statement.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a written tenancy agreement that began on August 1, 2012; however, the Tenants were granted early possession on July 19, 2013. Rent is payable on the first of each month in the amount of \$1,500.00 and on July 19, 2012, the Tenants paid \$750.00 as the security deposit. No move in condition inspection report was completed.

The Agent pointed to the October 1, 2013, letter in evidence that was written by the male Tenant and delivered to the Landlord. He noted that the letter consists of only one sentence which states: *"This serves as one month notice for the premises at (address of rental unit)"*. The Agent submitted that his father took this letter to mean the Tenants were ending their tenancy on November 1, 2013. He argued that this was not proper notice; therefore, the Landlord chose to wait to this proceeding before taking any action to re-rent the unit. The Agent confirmed that neither he nor the Landlord made any attempt to discuss this notice with the Tenants.

The Tenants testified and confirmed that they were vacating the property November 1, 2013, the day of this proceeding. The male Tenant affirmed that after receiving the 10 Day notice for unpaid rent he paid the Landlord \$750.00 cash for October rent, in the presence of a witness. He stated that he short paid the rent because he does not trust the Landlord. The Tenants confirmed they do not have an Order authorizing them to short pay rent and they do not have receipts for emergency repairs which total the amount they deducted from their rent.

The Tenants argued that the Landlord refused to provide them with a copy of the tenancy agreement. They indicated that the Landlord demanded that rent be paid in cash and he refused to provide receipts for their records. They acknowledged receiving a copy of the tenancy agreement in the Landlord's evidence however they still need receipts for rent payments for their records.

The Tenants seek \$500.00 in compensation for the loss of use of their oven. They stated that their natural gas stove and oven had a gas leak back in April 2013. They

provided evidence that the natural gas company came and turned off the gas valve on April 13, 2013. They requested that the Landlord have the appliance repaired and they sent a repair person who shut off the valve to the oven and told them that they could still use the stove top burners. The female Tenant indicated that she was now afraid to use the gas stove so they have been using an electric stove, which is in the basement, ever since. The Tenants stated that they did not want to make an application for dispute resolution to resolve this matter. It was not until the Landlord told them to get rid of their two dogs or move out, that they decided to make a claim for the stove issue.

The Agent argued that they did what was required under the Act by having a repair person attend the unit. He confirmed that they left the oven turned off and that it was safe for the Tenants to use the stove top burners. They offered the Tenants the use of the electric stove and oven which was located in the basement area of the home and they accepted that offer. The Agent stated that the Tenants never mentioned the stove issue again until they filed their October application for dispute resolution.

The Agent confirmed that the Tenants had requested a copy of their tenancy agreement, prior to this proceeding, and that they did not provide them with a copy. When asked why a copy was not provided prior to this proceeding the Agent stated that they were provided a copy of the tenancy agreement at the beginning of the tenancy. There was no other explanation offered for the Landlord's refusal to provide a copy. The Agent did not provide testimony as to why receipts were not provided for the rent payments.

The Agent testified that \$750.00 still remains unpaid for October 2013 rent. He confirmed that the 10 Day Notice was personally served upon the Tenants on October 2, 2013.

At the conclusion of this proceeding I informed the parties that the Landlord will be granted an Order of Possession. I also cautioned both parties that they need to communicate with each other in order for each party to meet their obligations set out in the Act to finalize this tenancy.

I then confirmed addresses for service of my decision and the Tenants provided a new address for service as listed on the front of this decision.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

### **Tenants' application**

In this case I find the Tenants provided insufficient evidence to prove they did what was reasonable to minimize the loss of use of the oven. I make this finding in part because the Tenants testified that they were afraid to use the natural gas oven and that they used the electric oven instead. Furthermore, the Tenants took no action to resolve the issue for six months only to seek monetary compensation when they knew they were ending their tenancy. Accordingly, I find this claim does not meet the test for damage or loss, as listed above and I dismiss the Tenant's claim for compensation, without leave to reapply.

Section 26(2) of the Act stipulates that a landlord must provide a tenant with a receipt for rent paid in cash.

The evidence supports that the Tenants paid their rent in cash and requested receipts. In the absence of testimony to the contrary, I hereby find the Landlord has not complied with section 26(2) of the Act, as listed above. Accordingly, I hereby Order the Landlord to provide the Tenants with copies of written receipts for "all" rent paid to date. I further order that the receipts are to be sent registered mail to the Tenants in care of the address written on the front of this decision, no later than November 30, 2013. If the Landlord fails to comply with this order the Tenants will be at leave to apply for monetary compensation.

The Tenants have not been primarily successful with their application, therefore, I award only partial recovery of the filing fee in the amount of **\$10.00**.

### **Landlord's application**

Section 44 of the Act stipulates when a tenancy ends. Section (1)(a)(i) states the tenancy ends when a tenant provides notice in accordance with Section 45 of the Act while Section (1)(a)(ii) stipulates that the tenancy will end if the landlord services a notice to end tenancy for unpaid rent in accordance with Section 46 of the Act.

In this case, on October 1, 2013, the Tenants provided written notice to end their tenancy effective November 1, 2013. This notice does not comply with section 45 of the Act that stipulates the notice was be served upon the landlord on a day prior to when rent is due to end the tenancy on the day before rent is due. For clarity, in this case rent was payable on the first of each month; therefore, the Tenants were required to serve their notice on September 30, 2013, which would end their tenancy effective October 31, 2013.

Then on October 2, 2013, the Landlord served a 10 Day Notice for unpaid rent, ending the tenancy effective October 12, 2013, in accordance with section 46. The Tenants disputed this Notice by amending their application for dispute resolution on October 7, 2013.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement. This tenancy agreement required that the Tenants pay \$1,500.00 rent on the first of each month. The Tenants withheld \$750.00 from their rent payment for reasons that they do not trust the Landlord.

Based on the above I find the Tenants breached the Act by short paying their rent, therefore, this tenancy ended on **October 12, 2013**, in accordance with the Notice. Accordingly, the Tenants are overholding the rental unit as they continue to occupy it. Therefore, I grant the Landlord an Order of Possession.

As the Tenants have breached section 26 of the Act by short paying their rent; I find the Landlord has met the burden of proof to establish their claim for October 2013 unpaid rent. Accordingly, I award the Landlord monetary compensation for unpaid rent of **\$750.00**.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' recovery of their filing fee as follows:

Unpaid October 2013 rent	\$750.00
Landlord's filing fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$800.00</b>
<b>LESS: Tenants' filing fee</b>	<b><u>- 10.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$790.00</u></b>

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$790.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY Order the Landlord to provide the Tenants with copies of written receipts for "all" rent paid to date, as listed above.

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: November 04, 2013

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Residential Tenancy Branch

