



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MND, MNR, MNSD, & FF.

This hearing dealt with an application by the landlord for an Order of Possession and a monetary claim related to damage to the rental unit and non-payment of rent. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Although the tenant was served with notice of the landlord's application and this hearing in person on September 2, 2008, she did not appear for the hearing. I proceeded with the hearing in her absence being satisfied that the tenant was served in accordance with the *Act*.

Although the landlord has filed a monetary claim for damages to the rental unit as part of this claim, I have dismissed this portion of the application with leave to re-apply. I have done so because it is premature to file a claim for damages while the tenancy is still in existence. The tenant has an opportunity to repair the alleged damages prior to the end of the tenancy as part of her obligation to return the rental unit to its original condition at the end of the tenancy, less any normal wear and tear.

Based on the uncontested evidence of the landlord, I accept that the tenant was served with a ten day Notice to End Tenancy by registered mail dated August 14, 2008. The tenant had five days, after receiving the notice, to either pay the outstanding rent and utilities in full or to file an application to dispute the notice. Although the tenant paid a portion of the outstanding rent and utilities on August 21, 2008 in the amount of \$1,225.00, this was outside of the timelines allowed under the *Act*. I am satisfied that the landlord accepted this payment for "use and occupancy only" and that this payment did not reinstate the tenancy.

Having found that the tenant failed to exercise her rights under section 46(4) of the *Act*, I deem that she has accepted the end of the tenancy pursuant to section 46(5) of the *Act*. On this basis I grant the landlord an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I also accept the evidence of the landlord that the tenant owes rent and utilities for the months of August and September 2008 for the sum of \$1,325.00 and a NSF (non-sufficient funds) charge of \$25.00 for August 2008 rent. I also grant the landlord's request to recover the \$50.00 filing fee paid for this application for a total monetary claim of \$1,375.00. From this sum I Order that the landlord may retain the tenant's security deposit and pet deposit, plus interest, of \$1,204.23.

I grant the landlord a monetary Order for the remaining balance of **\$170.77**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated September 24, 2008.