



# Dispute Resolution Services

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

## DECISION

Dispute Codes: OPR, MND, MNR, FF.

### Introduction:

This hearing dealt with an application by the landlord for an Order of Possession, a monetary claim related to non-payment of rent, a monetary claim related to damage to the rental unit and a request to recover the filing fee for this application.

I am dismissing, with leave, the landlord's request for a monetary claim related to damage to the rental unit. This request is premature since the tenancy has not ended and the landlord also stated in the hearing that not all of the damage claimed was allegedly caused by the tenant.

### Analysis:

I accept that the tenant was served with a ten day Notice to End Tenancy due to non-payment of rent on July 21, 2008 in person. I also accept that the tenant did not pay the outstanding rent or file an application for dispute resolution within five days as required by section 46(4) of the *Act*. Having failed to exercise either of these rights the tenant is conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the *Act*.

I accept the landlord's evidence that the tenant has failed to pay the rent for five months for the sum of \$4,000.00. The tenant also conceded that she did not pay the rent for these months on the basis that she could not afford the rent and based on her allegation that the rental unit is in need of significant repairs. I also accept the evidence of the parties that the tenant has paid rent for both August and September 2008.

Section 26 of the *Act* states:

- 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.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.
- (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
- (a) seize any personal property of the tenant, or
  - (b) prevent or interfere with the tenant's access to the tenant's personal property.
- (4) Subsection (3) (a) does not apply if
- (a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Therefore, regardless if the tenant's allegations that the rental unit was in such a state that there could have been a reduction in rent, she was in breach of the *Act* by withholding rent without an Order under the *Act* to do so.

On the basis of the tenant's breach of the *Act* pursuant to section 26 and 46, I Order that the landlord receives an Order of Possession effective **September 30, 2008**. I am allowing the tenant to remain in the rental unit to September 30, 2008 as the rent for this month has been paid.

This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I also find that the tenant owes the landlord the sum of \$4,000.00 for outstanding rent and I award the landlord the recovery of half the filing fee paid for this application for the sum of \$50.00.

From this sum I Order pursuant to section 38 of the *Act* that the landlord retains the tenant's security deposit of \$400.00 plus accumulated interest of \$6.28.

I grant the landlord a monetary Order for the remaining balance of **\$3,643.72**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I have granted the landlord's application in part. The landlord has received an Order of Possession effective September 30, 2008 and a monetary Order for the sum of \$3,643.72.

Dated September 15, 2008.