



# Dispute Resolution Services

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

## Dispute Codes:

OPR, MNR, MNSD, FF

## Introduction

This hearing dealt with the Landlord's application for an Order of Possession for Unpaid Rent; a monetary Order for unpaid rent; to retain all or part of the security deposit paid by the Tenant; and to recover the cost of filing this Application for Dispute Resolution from the Tenant.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served on the Tenant on September 19, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

## Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

## Background and Evidence

The Agent for the Landlord stated that the Tenant is required to pay monthly rent of \$375.00. He stated that the Tenant paid a security deposit, in the amount of \$162.50. He did not know exactly when the security deposit was paid, however he estimates it was approximately eighteen months ago.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 12, 2008, was posted on the front door of the rental unit on September 02, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$375.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that they must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that the Tenant's rent for October was paid on October 06, 2008, but that his rent for September remains unpaid.

### Analysis

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the absence of evidence to the contrary, I find that the Tenant did not pay her September rent. As I have no evidence to show that the Tenant paid her outstanding rent or that she filed an Application for Dispute Resolution within five days of receiving the Notice to End Tenancy, I find that the Tenant accepted that the tenancy has ended, pursuant to section 46(5) of the Act. On this basis I will grant the Landlord an Order of Possession that is effective on October 31, 2008.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application.

### Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on October 31, 2008. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$425.00, which is comprised of \$375.00 in unpaid rent from September and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit of \$162.50, in partial satisfaction of this monetary claim. As the Agent for the Landlord was unable to ascertain the exact date that the security deposit was paid, I am unable to calculate the interest that is due to the Tenant. I find that the Landlord must determine the amount of interest due to the Tenant and must return that amount.

Based on these determinations I grant the Landlord a monetary Order for the amount \$262.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: October 20, 2008