

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

DECISION

Dispute Codes: OPR, MNR, FF

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

On May 21, 2003, the landlord collected a security deposit from the tenant in the amount of \$200.00. The tenancy began on June 1, 2003. Rent in the amount of \$415.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the months of August and September, 2008 and on September 3, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of October.

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is seeking to recover from the tenant outstanding rent for August and September in the amount of \$830.00. The tenant is presently still living at the dispute address and he has not paid the monthly rent of \$415.00 for October. The landlord is therefore seeking to include a claim for loss of income for the amount of \$415.00. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while he was still in residence and I allow the claim for a further \$415.00.

I dismiss the landlord's claim of \$40.00 charges for late payment of rent for August and

September for this reason. The landlord did not submit a copy of the tenancy agreement to support her assertion that late payment charges are applicable in this tenancy.

Based on the above, I find that the landlord has established a claim for \$830.00 in unpaid rent and \$415.00 in loss of income. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$206.39 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1088.61. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 10, 2008.