



# Dispute Resolution Services

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

## Decision

**Dispute Codes:** MNR MNSD OPR FF

## Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

At the beginning of the hearing the Agent for the Landlord asked to amend the Application for Dispute Resolution to include a claim for compensation for loss of revenue for the month of December. I disallow the amendment, on the basis that the Tenants have not been properly advised that the Landlord wishes to seek compensation that includes loss of revenue. The Landlord retains the right to file another Application for Dispute Resolution claiming for compensation for loss of revenue from December.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on November 19, 2008. A tracking number was provided. The Canada Post website shows the mail was delivered on November 27, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants 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 all or 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 *Residential Tenancy Act (Act)*.

### **Background and Evidence**

The Agent for the Landlords stated that the tenancy agreement requires the Tenants to pay monthly rent of \$900.00, and that they paid a security deposit of \$450.00 on August 02, 2007.

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 October 18, 2008, was placed in the Tenants mail box on October 08, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$900.00 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 the Tenant 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 still owes \$900.00 in rent from October of 2008 and \$900.00 in rent from November of 2008.

## **Analysis**

Section 90 of the *Act* stipulates that a document that is placed in a mail slot is deemed to be received on the third day after it is delivered. I therefore find that the Tenant received the Notice to End Tenancy on October 11, 2008.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 11, 2008, I find that the earliest effective date of the Notice is October 21, 2008.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 21, 2008.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on October 21, 2008, pursuant to section 46 of the *Act*.

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 circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlords an Order of Possession that is effective two days after it is served upon the Tenants.

In the absence of evidence to the contrary, I find that the Tenants have not paid rent in the amount of \$1,800.00 for October and November of 2008, and that the Landlords are entitled to compensation in that amount.

I find that the Landlords' application has merit, and I find that the Landlords are entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

I find that the Landlords are entitled to retain the Tenants' security deposit plus interest, in the amount of \$459.12, in partial satisfaction of the monetary claim.

### **Conclusion**

The Landlords have been granted an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlords have established a monetary claim, in the amount of \$1,850.00, which is comprised on \$1,800.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$459.12, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,390.88. 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.

Dated: December 05, 2008