



## 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 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. It is apparent on the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for loss of revenue, and the Application was therefore amended to include an application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*.

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 December 09, 2008. A tracking number was provided. The Canada Post website shows the mail was not picked up by the recipient. These documents are deemed to have been served in accordance with section 89 of the *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 a monetary Order for lost revenue; 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 *Act*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on February 01, 2008 and that the Tenant is required to pay monthly rent of \$770.00. The Tenant paid a security deposit of \$385.00 on February 01, 2008.

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 November 16, 2008, was posted on the front door of the rental unit on November 03, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$770.00 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 owes \$770.00 in rent from November of 2008 and \$770.00 in rent from December of 2008. The Landlord is also seeking compensation for loss of revenue from January of 2009, due to the fact that the Tenant is still residing in the rental unit.

### Analysis

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 November 16, 2008, pursuant to section 46 of the *Act*. I find that the Tenant did not vacate the rental unit, as required by the Notice, on November 16, 2008.

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 Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$770.00 for November of 2008, and that the Landlord is entitled to compensation in that amount.

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In the absence of evidence to the contrary, I find that the Tenant has not paid rent for January, and that his continued presence in the rental unit has prevented the Landlord from finding a new tenant. In these circumstances I find that it is unlikely that the Landlord will be able to find new tenants prior to February 01, 2009, and I find that the Landlord is entitled to compensation for lost revenue from January in the amount of \$770.00.

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 for Dispute Resolution.

### Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$2,360.00, which is comprised on \$1,540.00 in unpaid rent, \$770.00 as compensation for lost revenue, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$390.29, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,969.71. 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: January 06, 2009

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