



# 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.

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 25, 2008. A tracking number was provided. The Canada Post website shows the mail was picked up on December 02, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy 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 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 the Tenant is required to pay monthly rent of 751.82. The Agent stated that the Tenant paid a security deposit of \$363.50 on September 01, 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 November 19, 2008, was posted on the front door of the rental unit on November 06, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$780.83 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 owed \$780.83 when the Notice to End Tenancy was served. He stated that the Tenant was subsequently assessed a late fee of \$25.00 for November of 2008, bringing his total debt to \$805.83. He stated that the Tenant paid \$251.82 on November 07, 2008, leaving unpaid rent in the amount of \$554.01.

The Agent for the Landlord stated that the Tenant has paid no rent for December of 2008. The Agent stated that he would prefer to have an Order of Possession for December 15, 2008, rather than to permit the Tenant to remain in the rental unit until December 31, 2008.

## **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 19, 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 Landlord an Order of Possession that is effective at 1:00 p.m. on December 15, 2008.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$554.01, and that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenant has not paid for December, and I find that the Landlord is entitled to compensation for any days in December that the Tenant will occupy the rental unit. In these circumstances the Landlord elected not to permit the Tenant to remain in the rental unit until the end of the month, and I find the Landlord is entitled to compensation for 15 days of rent at a rate of \$25.25 per day, for a total of \$378.75.

I find that the Landlord's 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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$370.50, in partial satisfaction of the monetary claim.

### **Conclusion**

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on December 15, 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 \$982.76, which is comprised on \$932.76 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 \$370.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$612.26. 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 11, 2008