



# 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, 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 withdrew the application for an Order of Possession, as the Tenant has vacated the rental unit.

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 29, 2008. A tracking number was provided. The Canada Post website shows the mail was refused by the recipient on December 03, 2008. The Agent stated that the documents were also posted on the front door of the rental unit on November 26, 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 to a monetary Order for unpaid rent; to a monetary Order for loss of revenue from December of 2008; 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, 67, and 72 of the *Act*.

### **Background and Evidence**

The Agent for the Landlord stated that this tenancy began on April 01, 2005; that the Tenant vacated the rental unit on December 03, 2008; that she was required to pay monthly rent of \$690.00; and that she paid a security deposit of \$330.00 on March 15, 2005.

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 06, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$775.00 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 \$85.00 in rent from October of 2008 and \$690.00 in rent from November of 2008.

The Agent for the Landlord stated that they were unable to rent the rental unit for December 01, 2008 because the rental unit was still being occupied and it needed

cleaning at the end of the tenancy. The Landlord is seeking compensation for loss of revenue between December 01, 2008 and December 15, 2008, in the amount of \$345.00.

### **Analysis**

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on November 06, 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 November 09, 2008, I find that the earliest effective date of the Notice is November 19, 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 November 19, 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 November 19, 2008, pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that the Tenant did not vacate the rental unit until December 03, 2008.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$85.00 for October of 2008 and \$690.00 for November of 2008, and that the Landlord is entitled to compensation in that amount.

I find that the Landlord was prevented from finding new tenants for the rental unit on December 01, 2008 because the Tenant unit was still in the rental unit. I find, therefore, that the Landlord is entitled to compensation for loss of revenue between December 01, 2008 and December 14, 2008, in the amount of \$345.00, as the Tenant's actions prevented the Landlord from finding new tenants during this period.

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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$341.46, in partial satisfaction of the monetary claim.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$1,170.00, which is comprised on \$775.00 in unpaid rent; \$345.00 in loss of revenue from December; 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 \$341.46, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$828.54. 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 15, 2008

