



# 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 hearing the Landlord withdrew his application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to both Tenants via registered mail at the address noted on the Application, on November 19, 2008. A tracking number was provided for both packages. The Canada Post website shows that neither package was 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 a monetary Order for unpaid rent, unpaid parking, and late fees; 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 *Residential Tenancy Act (Act)*.

### **Background and Evidence**

The Agent for the Landlord stated that the Tenants were required to pay monthly rent of \$1,500.00 plus a monthly parking fee of \$25.00. He also stated that they paid a security deposit of \$697.50 on August 08, 2005. The Landlord submitted a tenancy agreement that shows the Tenants agreed to pay a late fee of \$15.00 if they were late paying their rent by three days or less, and that they agreed to pay a late fee of \$30.00 if they were late paying their rent by three days or more.

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 16, 2008, was posted on the front door of the rental unit on October 06, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,550.00 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 did not vacate the rental unit until November 28, 2008. The Agent stated that the Landlord did not know when the Tenant was going to vacate the rental unit until November 17, 2008, at which time the Tenants gave written notice of their intent to vacate at the end of November.

The Agent is seeking compensation for loss of revenue, in the amount of \$1,525.00 for December, as the Tenants did not vacate the rental unit as required by the Notice to End Tenancy. The Agent for the Landlord stated the Landlord did not know the rental

unit would be vacant on November 30, 2008 until November 17, 2008, which prevented the Landlord from finding new tenants for December 01, 2008. The Agent stated that rental unit has not yet been rented.

The Agent for the Landlord stated that the Tenant still owes \$1,525.00 in rent and parking fees from October of 2008 and \$1,525.00 in rent and parking fees from November of 2008.

In the Application for Dispute Resolution, the Landlord applied for three monthly late fees of \$30.00. At the hearing the Agent for the Landlord amended the application to claim late fees, in the amount of \$25.00 per month, for October and November of 2008.

### **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 October 09, 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 09, 2008, I find that the earliest effective date of the Notice is October 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 October 19, 2008.

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that required the Tenants to vacate the rental unit on October 19, 2008, pursuant to section 46 of the *Act*. I find that the Tenants did not vacate the rental unit until November 28, 2008.

I find that the Tenants did not comply with the Act when they did not vacate the rental unit on October 19, 2008. I find that the Tenants' actions prevented the Landlord from finding new tenants for December 01, 2008, as the Landlord did not have reasonable notice that the rental unit would be vacated by that date. I find that the Landlord is therefore entitled to compensation for loss of revenue from December 01, 2008 to December 14, 2008, in the amount of \$750.00. I dismiss the Landlord's application for compensation for loss of revenue from December 15, 2008 to December 31, 2008, with leave to reapply on this single issue, if the Landlord is unable to rent the unit for December 15, 2008.

In the absence of evidence to the contrary, I find that the Tenants have not paid rent and parking fees in the amount of \$3,050.00 for the months of October and November of 2008, and I find that the Landlord is entitled to compensation in that amount.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for the fee.

The tenancy agreement provides for a \$30.00 late fee for payments made more than three days after rent is due, which is not authorized by the Regulation. The tenancy agreement also provides for a late payment fee of \$15.00 for payments made within three days of the date rent is due, an agreement which is compliant with the legislation. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a late payment fee of not more than \$25.00.

I find that the Landlord agreed to pay a late fee of \$15.00 or \$30.00, but that he did not agree to a late fee of \$25.00. I therefore find that the Landlord is only entitled to compensation for late fees in the amount of \$15.00 for October of 2008 and \$15.00 for November of 2008.

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 Tenants' security deposit plus interest, in the amount of \$721.41, in partial satisfaction of the monetary claim.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$3,880.00, which is comprised on \$3,050.00 in unpaid rent and parking fees, \$750.00 in compensation for loss of revenue for December, \$30.00 in late fees, 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 \$721.41, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,158.59. 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 04, 2008

