



# Dispute Resolution Services

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

## Decision

### 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

### 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 Landlord and the Tenant agree that this tenancy began on October 01, 2004; that the Tenant is required to pay monthly rent of \$744.38; and that the Tenant paid a security deposit of \$360.00 on October 04, 2004.

The Tenant stated that she the previous landlord had verbally agreed to allow her to pay half of her rent on the first day of each month and the remainder of the rent in the middle of the month. The Agent for the Landlord stated that the current Landlord took possession of the rental unit in 2005, at which time the Tenant was clearly advised that her rent was due, in full, on the first day of each month. The Landlord submitted a copy

of the tenancy agreement, which indicates the rent is due on or before the first day of each month.

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 December 12, 2008, was posted on the front door of the rental unit on December 02, 2008. The Notice 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 pays all of the outstanding rent or files an Application for Dispute Resolution within five days of receiving the notice.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay any of her rent for December until December 16, 2008, at which time she paid her rent for December in full. The parties agree that the Tenant still owes \$369.38 in rent from January of 2009.

### 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 December 05, 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 December 05, 2008, I find that the earliest effective date of the Notice is December 15, 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 December 05, 2008.

I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on December 05, 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.

The evidence shows that the Tenant did not pay any of the rent that was due for December until December 16, 2008. Even if I accepted the Tenant's evidence that only half of her rent was due on December 01, 2008, the evidence shows that she did not

meet that obligation. On this basis I will be upholding the Notice to End Tenancy that was served on the Tenant.

As the Tenant has paid a portion of her rent for January, and I will be granting the Landlord a monetary Order for the remainder of the rent, I will grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 21, 2009.

The evidence shows that the Tenant has not paid rent in the amount of \$369.38 for January of 2009, and I find that the Landlord is entitled to compensation in that amount.

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 \$372.74, 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 January 31, 2009. 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 \$419.38, which is comprised on \$369.38 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 \$372.74, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$46.64. 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 15, 2009.