



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### **Dispute Codes:**

OPR, MNR, MNSD, FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Landlord’s application for an Order of Possession; 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 this application.

The Landlord gave affirmed evidence and this matter proceeded on its merits.

### **Preliminary Matter**

At the onset of the Hearing, the Landlord stated that the Tenant moved out of the rental unit on January 31, 2009. The Landlord withdrew his application for an Order of Possession and requested a monetary order for unpaid rent, to apply the security deposit towards money owed to the Landlord and to recover the filing fee from the Tenant for the cost of this application.

### **Issue(s) to be Decided**

1. Was the Tenant served with the Notice to End Tenancy and Hearing package?
2. Is the Landlord entitled to a monetary order and to apply the security deposit towards the amount owed?
3. Is the Landlord entitled to recover the cost of filing this application from the Tenant?

## **Background and Evidence**

The Landlord testified that he personally served the Tenant with the Notice to End Tenancy at the Tenant's residence on December 2, 2008.

The Landlord testified that he mailed the Tenant the hearing package, by registered mail, on January 22, 2009. The Landlord provided a tracking number and testified that the package was returned to the Landlord unclaimed on February 23, 2009.

The Landlord testified, as follows:

- The tenancy started on January 1, 2008.
- Monthly rent was \$645.00, due on the first day of the month.
- The Tenant paid a security deposit in the amount of \$322.50 to the Landlord on January 1, 2008.

The Landlord asked for a monetary order in the amount of \$2,240.07 for unpaid rent, NSF and late charges, calculated as follows:

January 9, 2008 late charge	\$50.00
January 9, 2008 NSF fee	\$50.00
February 2008 rent arrears	\$295.00
February 2, 2008 late charge	\$50.00
February 19, 2008 NSF fee	<\$5.00>
April 2008 rent arrears	\$265.00
May 2, 2008 late charge	\$50.00
June 2008 rent	\$730.00
June 2, 2008 late charge	\$50.00
July 2, 2008 late charge	\$75.00
August 2, 2008 late charge	\$75.00
August 18, 2008 filing fee	\$50.00

September 2008 rent	\$425.07
September 2, 2008 late charge	\$75.00
December 2008 rent	\$645.00
December 2, 2008 late charge	\$75.00
January 2009 rent	\$645.00
Filing fee	<u>\$50.00</u>
 TOTAL	 \$3,650.07
	=====

### **Analysis**

I accept the Landlord's affirmed evidence that he served the Tenant with the Notice to End Tenancy on December 2, 2008.

I accept the Landlord's affirmed evidence that he mailed the hearing package, by registered mail, to the Tenant's residence on January 22, 2009. Pursuant to Section 90 of the Act, the Tenant is deemed to have received the hearing package on January 27, 2009.

The Landlord's monetary claim did not add up. When questioned, the Landlord stated that he had just started employment with the Landlord and could not answer specific questions about the amounts owed, except that he was certain that the Tenant had not paid rent for December, 2008 and January 2009.

The Act does not allow for late fees and NSF charges of \$50.00 and \$75.00 per cheque and I dismiss this portion of the Landlord's claim. I dismiss the Landlord's claim with respect to unpaid rent, except for the months of December, 2008 and January, 2009, in the total amount of \$1,290.00. I dismiss the Landlord's claim for a filing fee for August 18, 2008.

The Landlord has been partially successful in his claim and I grant the Landlord's application to recover the filing fee from the Tenant for the cost of this application.

Pursuant to section 72 of the Act, the Landlord is entitled to apply the security deposit, together with interest accrued thereon, towards satisfaction of his monetary claim.

The Landlord has established a monetary claim in the amount of \$1,012.62, calculated as follows:

Unpaid rent for December, 2008 and January, 2009	\$1,290.00
Recovery of the filing fee	\$50.00
Less security deposit and accrued interest of \$4.88	<u>&lt;\$327.38&gt;</u>
TOTAL	\$1,012.62
	=====

### **Conclusion**

I grant the Landlord a monetary order under section 67 of the Act for \$1,012.62. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

March 11, 2009

---

---