

# 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.

I reviewed the evidence on the case file prior to the Hearing. The Landlords gave affirmed evidence and this matter proceeded on its merits.

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

This is the Landlords’ application for an Order of Possession and a Monetary Order for unpaid rent, to retain the security deposit and recover the filing fee from the Tenant.

- (1) Are the Landlords entitled to an Order of Possession?
- (2) Are the Landlords entitled to a monetary order?

### **Background and Evidence**

#### Landlords’ evidence

The Landlord EB testified that she posted the Notice to End Tenancy over the key hole on the door of the Tenant’s residence on January 2, 2009.

The Landlord EB testified that she personally served the Tenant with a copy of the Application for Dispute Resolution and hearing package on January 21, 2009 at the Tenant's residence.

The Landlord EB testified that:

- The tenancy started on March 4, 2008.
- The monthly rent was \$550.00.
- The Tenant is in arrears of \$10.00 for December, 2008 rent; \$550.00 for the month of January; \$550.00 for the month of February; and has not paid any rent for the month of March, 2009.
- The Tenant paid a security deposit in the amount of \$275.00 on March 4, 2008.
- The Tenant is still residing in the rental unit.

The Landlord asked for a monetary order to include loss of rent for the month of March, 2008.

### **Analysis**

I accept the Landlord EB's testimony that the Tenant has been properly served with the Notice to End Tenancy. Service by way of posting a document on a tenant's door is deemed to be served three days after posting the document. In this case, service was effected on January 5, 2009, and the effective end to the tenancy is therefore January 15, 2009.

The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy and is conclusively presumed to have accepted that the tenancy ended effective January 15, 2009.

I accept the Landlord EB's testimony that she personally served the Tenant with the Notice of Hearing Package and Application for Dispute Resolution on January 21, 2009.

In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

The Landlords are entitled to an immediate Order of Possession and I make that order.

The Landlords have established their monetary claim for rent arrears and loss of rent for December, 2008, January, 2009 and February, 2009. With respect to the Landlords' application for damages for loss of March, 2009, rent, I find that it is premature. It is early in the month and the Landlords may be able to re-rent the rental unit prior to the end of March, 2009. I allow a per diem amount for loss of March rent and give the Landlords leave to apply for any other loss of rent for March once they have re-rented the suite.

Pursuant to Section 72 of the Act, the Landlords may apply the security deposit, together with any accrued interest thereon, towards their monetary order.

The Landlords have been successful in their application and are entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

I therefore make a monetary order in favour of the Landlords the amount of \$917.07, calculated as follows:

Unpaid rent for December, 2008:	\$10.00
Unpaid rent for January and February, 2009:	\$1,100.00
Loss of rent for March 1 and 2, 2009:	\$35.48
(per diem: \$550.00 / 31 days = \$17.7419)	
Recovery of filing fee	\$50.00
Less security deposit and interest	<u>&lt;\$278.41&gt;</u>
TOTAL	\$917.07
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### **Conclusion**

I grant the Landlords leave to re-apply with respect to loss of rent for the month of March, 2009.

I grant the Landlords a monetary order for \$917.07 against the Tenant. This order may 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.

Under section 55 of the Act, and based on the above facts I find that the Landlords are entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

March 2, 2009

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