



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

**OPR, O, MNSD, MNDC, FF**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order for unpaid rent, late payment fees, money owed for loss under the act, to keep the security deposit, and recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. The tenant was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed.

Representatives for the landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me.

Despite being served notice of this hearing, the tenant did not appear.

### Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Residential Tenancy Act*
- Whether the landlord is entitled to a monetary claim under section 67 of the *Act* for unpaid rent

- Whether the landlord is entitled to a monetary claim for breach of a material term in the tenancy agreement
- Whether the landlord is entitled to recover the filing fee pursuant to section 72(1) of the *Residential Tenancy Act*

#### Background and Evidence

The tenancy is for a fixed term commencing on June 1, 2008 expiring on May 31, 2009. Rent is \$925.00 per month plus \$5.00 storage. A security deposit of \$462.50 was paid on May 12, 2008.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the tenant's door on March 2, 2009. The tenant failed to pay the rental arrears by the March 15, 2009 deadline.

The landlord advised that the tenant made a payment on March 24, 2009 of \$960.00 which was applied to arrears of \$15.00 for February 2009 balance owing, \$925.00 March 2009 rent, \$5.00 March 2009 storage locker rental, and \$15.00 towards the \$25.00 March late payment fee, leaving a balance owing of \$10.00.

The landlord advised that the tenancy agreement was not reinstated when the tenant made the March 24, 2009 payment, that the tenant advised that he would pay the \$10.00 balance owing on March 26, 2009 and that he was moving out on March 31, 2009.

The landlord has withdrawn her monetary claim for unpaid rent and for money owed for loss under the *Act*. The landlord is still seeking a monetary claim to recover the filing fee of \$50.00 and the \$10.00 balance owed against the March late payment fee.

The landlord is requesting an Order of Possession effective March 31, 2009.

## Analysis

**Order of Possession** – I accept that the tenant has been served with notice to end tenancy effective on March 5, 2009. The tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The landlord and tenant have agreed to end the tenancy effective March 31, 2009.

**Monetary Claim - \$10.00 Balance of Late Payment Charge** – Late payment charges of \$25.00 are listed as a material term in section 10 of the tenancy agreement which was entered into evidence by the applicant. I find in favor of the landlord's claim for the balance of the late payment charge pursuant to Section 7 of the *Residential Tenancy Regulation*.

**Filing fee - \$50.00.** I find that the landlord has succeeded in large and that she should recover the filing fee from the tenant.

## Conclusion

The landlord has withdrawn their request for a Monetary Order for unpaid rent or utilities.

The landlord has withdrawn their request for a Monetary Order for money owed or compensation for damage or loss under the Act.

The landlord has been granted an Order of Possession that is effective **March 31, 2009**. This order must be served on the tenant and can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Balance due Landlord on late payment fee from March 2009	\$10.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$ 60.00</b>

I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$462.50 plus interest calculated to March 31, 2009 of \$4.44.

March 25, 2009  
Date of Decision

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Dispute Resolution Officer