



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This decision was amended on March 25, 2009 to indicate that the file number on the Order of Possession and the file number on the monetary Order have been amended to show the correct file number. The file number on the decision itself has not been amended.

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding had insufficient evidence to conclude that the Ten Day Notice to End Tenancy was properly served on the Tenants.

The reconvened hearing was held to address 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 relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

All parties at the hearing gave affirmed evidence.

At the outset of the hearing the Tenant requested an adjournment to provide her with the opportunity to prepare documents to refute the monetary claims made by the Landlord and to seek legal representation. She stated that she did not receive the Application for Dispute Resolution and Notice of Hearing Documents until March 04, 2009. She stated that the occupants living in the rental unit above them have the only key to the mail box and they did not promptly deliver the Canada Post notice informing them they had registered mail.

The Landlord stated that he mailed the Application for Dispute Resolution and Notice of Hearing Documents to each Tenant, via registered mail, on February 19, 2009, which is two days after the Direct Request Proceeding. He submitted copies of two Canada Post receipts, with a tracking numbers, which corroborate his statement that the documents were mailed on February 19, 2009. The Landlord stated that the occupants of both rental units in the residential complex were provided with keys to the shared mail box, and that the Tenants should have received the documents in a timely manner.

At the conclusion of the hearing I advised both parties that the Tenant would be provided with the opportunity to provide additional evidence before I rendered my decision regarding the Landlord's monetary claim for unpaid rent. This decision was based on the Tenant's evidence that she did not receive notification of the hearing until March 4, 2009, and that she did not have five full business days to submit a response to the Landlord's claim.

At the conclusion of the hearing I reviewed the information on the Canada Post website and determined that the Tenants did have five full business days to respond to the Landlord's claim, as they received the Application for Dispute Resolution and the Notice of Hearing on March 02, 2009. As my decision to grant the Tenants time to submit additional evidence was based on false evidence, I have reconsidered that decision, I now find that the Tenants is not entitled to more time to submit evidence and I will be basing my decision on the information before me. In reaching this conclusion, I was strongly influenced by the fact that the Tenants did have a reasonable opportunity to prepare an explanation regarding the unpaid rent and to submit evidence in support of that explanation.

#### 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 submitted a copy of a tenancy agreement that shows this tenancy began on October 15, 2008, that the Tenants are required to pay monthly rent of \$1,250.00, and that the Tenant paid a security deposit of \$625.00 on October 15, 2008.

The Landlord stated that he personally served the Tenant's son with a ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of February 15, 2009 on February 04, 2009. The Landlord stated that he had been informed by the

occupants of the rental unit above the subject rental unit that the Tenant's son was residing in the rental unit.

The Tenant stated that her son was residing with her for a short time but that he moved out sometime in the middle of December of 2008. The Tenant called a personal friend as a witness. The witness initially stated that the Tenant's son was living with the Tenant at the rental unit. She subsequently stated that she has not seen the son in approximately three months and she knew he intended to move to an address in Langford, BC. The Tenant stated that her son gave her the 10 Day Notice to End Tenancy on February 05, 2009.

The Landlord stated that the Tenants still owe \$1,250.00 in rent from February of 2009 and \$1,250.00 in rent from March of 2009. The Tenant agrees that they did not pay rent for February and March, but she stated that the Landlord advised the male Tenant that rent did not need to be paid for those months. She stated that she does not know why the Landlord had agreed that rent was not due for those months. She stated that the male Tenant was unable to attend the hearing because he was working. The Tenants submitted no documentary evidence to establish that they were not required to pay rent for February and March of 2009.

The Landlord stated that he did not agree that rent for February or March of 2009 did not need to be paid.

### Analysis

As the Tenant acknowledged receiving the 10 Day Notice to End Tenancy from her son on February 05, 2009, I find that the Tenant received the Notice to End Tenancy on that date, pursuant to section 71(2)(b) of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the 10 Day 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 the evidence shows that the Tenants did not exercise either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective on March 31, 2009.

The evidence shows that the Tenants are required to pay monthly rent of \$1,250.00. The onus is on the Tenants to establish that the Landlord agreed that they were not required to pay rent for February and March of 2009. I find that the Tenants submitted insufficient evidence to corroborate the female Tenant's statement that the Landlord has agreed that they were not required to pay rent for these months. In reaching this conclusion, I considered the following:

- The male Tenant, who allegedly discussed the agreement with the Landlord, did not attend the hearing to explain why rent was not due for February and March
- The male Tenant did not provide a written explanation of why rent was not due of February and March, even though he had eight days to prepare a statement
- The female Tenant could not explain why rent was not due for February and March
- The Tenants provided no documentary evidence to corroborate their statement that rent was not due for February and March.

On this basis, I find that the Tenants owe \$2,500.00 in rent from February and March of 2009.

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 \$627.00, 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 March 31, 2009. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court. This Order of Possession was amended on March 25, 2009 to show the correct file number.

I find that the Landlord has established a monetary claim, in the amount of \$2,550.00, which is comprised on \$2,500.00 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 \$627.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,923.00. 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. This monetary Order was amended on March 25, 2009 to show the correct file number.

Date of Decision: March 10, 2009

Date of Amendment: March 25, 2009.