



# 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 dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlord's agent and one of the two tenants participated in the hearing and each gave affirmed testimony.

## **Issues to be Decided**

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the term of tenancy was from May 1, 2007 to April 30, 2008. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$750.00 is payable in advance on the first day of each month and a security deposit of \$375.00 was collected on April 7, 2007.

The tenants failed to pay rent for the month of February 2009. Accordingly, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent. The landlord submitted into evidence a copy of the 10 day notice dated February 2, 2009 which was served in person on the tenant(s) on that same date. Subsequently, the tenants made two installment payments, the first of \$600.00 and the second of \$200.00. The landlord accepted these payments for the purposes of use and occupancy only. The parties agree that rent in the amount of \$700.00 remains outstanding in addition to two fees for late payment of rent in the total amount of \$50.00.

## **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice which was February 12, 2009. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find the landlord has established a claim for \$800.00 which is comprised of \$700.00 in unpaid rent, \$50.00 in late fees (\$25.00 x 2), in addition to the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$375.00 plus interest of \$9.84, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$415.16 (\$800.00 - \$384.84).

During the hearing the tenant indicated her hope that the outstanding rent, fees for late payment of rent and the filing fee for this application would be paid to the landlord by no later than March 13, 2009. Accordingly, the landlord will determine whether it will be necessary to serve the order of possession and monetary order on the tenants.

## **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$415.16**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 4, 2009

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Dispute Resolution Officer