



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was scheduled in response to 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 and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that she personally served the female Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on February 28, 2009. She stated that she served amended copies of the Application for Dispute Resolution and Notice of Hearing to each Tenant via registered mail at the address noted on the Application, on April 06, 2009. Two Canada Post receipts, with tracking numbers, were submitted in evidence. The Canada Post website shows that neither package has been claimed by the Tenants. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### 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; 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 written tenancy agreement that shows that this tenancy began on November 01, 2008; that the Tenants are required to pay monthly rent of \$1,150.00; and that the Tenants are required to pay half of the gas, hydro and water bills.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 26, 2009, was posted on the front door of the rental unit on February 16, 2009, at approximately 1900 hours. The Notice indicated

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that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that the Tenants paid \$1,000.00 in rent on February 28, 2009, leaving a balance owing of \$150.00. She stated that the Tenants paid no rent for March of 2009, leaving a balance owing of \$1,300.00. She stated that the Tenants paid no rent for April of 2009, leaving a balance owing of \$2,450.00.

The Landlord submitted a hydro bill for the period between January 08, 2009 and March 05, 2009, in the amount of \$185.83. She stated that the Tenants have not paid 50% of this bill, which is \$92.91, as required by the tenancy agreement.

The Landlord submitted a Terasen Gas bill for the period between January 07, 2009 and February 04, 2009, in the amount of \$204.40. She stated that the Tenants have not paid 50% of this bill, which is \$102.20, as required by the tenancy agreement.

The Landlord submitted a Terasen Gas bill for the period between February 04, 2009 and March 05, 2009, in the amount of \$331.65. She stated that the Tenants have not paid 50% of this bill, which is \$165.82, as required by the tenancy agreement.

The Landlord submitted a water bill from the City of Surrey for the period between September 01, 2008 and December 31, 2008, in the amount of \$131.72. She stated that the Tenants have not paid any portion of this bill. She contends that the Tenants are only responsible for 50% of the billing period between November 01, 2008 and December 31, 2008, as the Tenants were not residing in the rental unit prior to November 01, 2008. 50% of that portion of the billing period is \$32.93.

## Analysis

I find that the Tenants entered into a tenancy agreement that required them to pay monthly rent of \$1,150.00, plus 50% of the hydro, gas, and water bills.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on February 19, 2009.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on February 19, 2009, I find that the earliest effective date of the Notice is February 29, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 29, 2009.

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that required the Tenants to vacate the rental unit on February 29, 2009, pursuant to section 46 of the *Act*.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay all of the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenants exercised 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 April 30, 2009.

In the absence of evidence to the contrary, I find that the Tenants have not paid rent in the amount of \$150.00 for February of 2009; \$1,150.00 for March of 2009; and \$1,150.00 for April of 2009, and I find that the Landlord is entitled to compensation in those amounts.

In the absence of evidence to the contrary, I find that the Tenants have not paid their portion of the hydro bill, in the amount of \$92.91, for the period between January 08, 2009 and March 05, 2009, and I find that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenants have not paid their portion of the Terasen Gas bills, in the amount of \$268.02, for the period between January 07, 2009 and March 05, 2009, and I find that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenants have not paid their portion of the water bill, in the amount of \$32.93, for the period between November 01, 2008 and December 31, 2008, and I find that the Landlord is entitled to compensation in that amount.



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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.

## Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on April 30, 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.

I find that the Landlord has established a monetary claim, in the amount of \$2,893.86, which is comprised on \$2,450.00 in unpaid rent, \$393.86 in unpaid utilities, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,893.86. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 20, 2009.

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Dispute Resolution Officer