



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, 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, 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.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on March 04, 2009. A tracking number was provided. The Canada Post website shows the mail was returned to the sender on April 23, 2009. 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; 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 Agent for the Landlord stated that this tenancy began on November 01, 2008 and that the Tenant is required to pay monthly rent of \$600.00.

The Landlord submitted a copy of a tenancy agreement that shows the Tenant is required to pay a security deposit of \$300.00. At the hearing, the Agent for the Landlord stated that the Tenant transferred a security deposit of \$575.00, which she had on deposit with the Landlord from a previous tenancy. The Agent stated that the \$575.00 was paid on February 01, 2007.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 24, 2009, was sent by registered mail to the Tenant on January 09, 2009. The Agent for the Landlord stated that a second ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 27, 2009, was sent by registered mail to the Tenant on February 12, 2009. The Landlord submitted copies of receipts from Canada Post that corroborate these statements.

The Notices to End Tenancy indicate 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 Agent for the Landlord stated that the Tenant has not paid any rent since she moved into the rental unit, and that she owes \$600.00 per month from the months of November, December, January, February, March, and April.

## Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord, and that the Tenant is currently required to pay monthly rent of \$600.00.

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.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 24, 2009, pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I also find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on February 27, 2009, pursuant to section 46 of the *Act*.

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 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 Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant 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.



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$600.00 for November of 2008, December of 2008, January of 2009, February of 2009, March of 2009, and April of 2009, and I find that the Landlord is entitled to compensation in the amount of \$3,600.00.

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 Tenant's security deposit plus interest, in the amount of \$591.63, 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 April 30, 2009. This Order may be served on the Tenant, 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 \$3,650.00, which is comprised on \$3,600.00 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 \$591.63, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,058.37. 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 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 24, 2009.

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Dispute Resolution Officer