

## **DECISION AND REASONS**

### Dispute Codes:

**OP, 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, 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 landlord stated that he served a copy of the Application for Dispute Resolution and Notice of Hearing personally to the tenant on April 24, 2009 at the rental unit address. The landlord states that service took place at approximately 5:30 pm. These documents are deemed to have been served in accordance with section 89 of the *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, 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 55, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$2,600.00 due on the first day of the month. The tenant paid a security deposit of \$1,300.00 on June 29, 2007.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 22, 2009, was served to the tenant by regular mail sent to the tenant service address on April 7, 2009. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$3,940.00 within five days of service. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant file an Application for Dispute Resolution within five days.

The Landlord stated that the tenant paid \$1,950.00 on May 22, 2009 and currently has arrears of \$710.00 for May rent. The landlord provided a copy of a tenant ledger detailing rent payments made up to May 8, 2009 at which point the tenant owed \$2,660.00.

### Analysis

Section 90 of the *Act* stipulates that a document that is sent by regular mail is deemed to be received on the fifth day after it is mailed. I therefore find that the tenant received the Notice to End Tenancy on April 12, 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 April 12, 2009 I find that the earliest effective date of the Notice is April 22, 2009, the date indicated on the Notice.

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 April 22, 2009, pursuant to section 46 of the *Act*.

Section 46 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. 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 **two days after it is served upon the tenant**.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$760.00 for May 2009, and that the landlord is entitled to compensation in that amount.

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 in the amount of **\$810.00** in satisfaction of the monetary claim. The landlord is currently holding a deposit plus interest of \$1,329.59 and must disburse the balance of the deposit as required under section 38 of the *Act*.

### Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. 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 **\$810.00**, which is comprised of \$760.00 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 in the amount of \$760.00, in satisfaction of the monetary claim.

Based on these determinations I Order the landlord to disburse the balance of the deposit held in trust by the landlord, as required under section 38 of the Act.

Dated May 29, 2009.

---

Dispute Resolution Officer