

## **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 tenants for the cost of this Application for Dispute Resolution.

The landlord attended the hearing at the scheduled time of 9:00 am. The tenant entered the conference call at 9:08 am; by which time I had determined service of the Notice of this hearing and of the 10 Day Notice to End Tenancy. The tenant was provided an opportunity to provide affirmed testimony, in response to the matters included in this application for dispute resolution and this testimony was considered against the evidence and testimony of the landlord. Both parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence and to make submissions.

### 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 tenants 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 \$835.00. The tenant paid a security deposit of \$302.00 on November 20, 2008.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 12, 2009, was personally served on the female tenant on March 2, 2009 at the rental unit address at 2:15 pm. The building manager testified that she hand-delivered the Notice to End Tenancy. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$835.00 in unpaid rent due on March 1, 2009 within five days of service. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants file an Application for Dispute Resolution within five days.

The Landlord stated that the tenants paid \$500.00 of March rent and that the tenants have not paid the balance of March rent owed or April and May rent, for a

balance owed of \$2,005.00.

The tenant testified that they did not receive the Notice to End Tenancy and that they were told that even if they paid rent the landlord was going to pursue an Order of possession. The landlord testified that they did receive \$500.00 for March rent and that after March 7, 2009 the tenants were told that any further rent payment in full would be accepted for use and occupancy only. The landlord testified that the tenants were also told that the rent owed for March was to be paid in full within five days of March 2, 2009; the date the Notice to End Tenancy was served to the tenants.

### Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on March 12, 2009, pursuant to section 46 of the Act. I accept the landlord testimony that the female tenant was personally served with the Notice to End Tenancy.

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 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 **two days after it is served upon the tenants**.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,005.00 for March, April and 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 tenants 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 **\$302.52** in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. 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 **\$2,055.00**, which is comprised of \$2,005.00 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 **\$302.52**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,752.48**. 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.

Dated May 21, 2009.

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Dispute Resolution Officer