

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** OPR, OPC, MNR, FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

The Landlord’s agent gave affirmed evidence and this matter proceeded on its merits.

### **Preliminary Matters**

The Landlord’s agent testified that the Tenant abandoned the rental unit some time between the 13<sup>th</sup> and 15<sup>th</sup> of March, 2009. Therefore, the Landlord withdrew its application for an Order of Possession. The Landlord’s agent testified that the Landlord did not know the current whereabouts of the Tenant and would be satisfied to retain the security deposit in partial satisfaction of its monetary claim for unpaid rent.

### **Issue(s) to be Decided**

- Is the Landlord entitled to retain the Tenant’s security deposit?

### **Background and Evidence**

#### Landlord’s evidence

- The Landlord’s agent testified that he served the Tenant with the 10 Day Notice to End Tenancy for unpaid rent by posting the Notice in the Tenant’s mail box on March 2, 2009.

- The Landlord's agent testified that he served the Tenant with the Application for Dispute Resolution and hearing package on March 12, 2009, by sliding the documents under the Tenant's door at the rental unit.
- Rent was \$648.00 per month. The Tenant is in arrears of rent for the months of March and April, 2009.
- The Tenant paid the Landlord a security deposit, however, the Landlord's agent did not have access to the Tenant's file and did not know how much was paid or on what date it was paid.
- The Tenant left the rental unit in such a state that it took the Landlord's agent one month to clean and repair the unit. The Landlord was able to re-rent the rental unit on May 1, 2009.

### **Analysis**

I accept the Landlord's agent's testimony that the Tenant was duly served with the 10 Day Notice to End Tenancy. Service in this manner is deemed to have been affected 3 days after posting the documents in the Tenant's mail box. The Tenant did not pay the rent, or dispute the Notice to End Tenancy, within 5 days of being served and is conclusively presumed to have accepted that the tenancy ended on March 15, 2009.

With respect to service of the Notice of Hearing documents, Section 89(1) of the Act states:

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)  
*[director's orders: delivery and service of documents]*.

The Landlord did not serve the Application for Dispute Resolution and Notice of Hearing documents in accordance with the Act. However, pursuant to Section 71(1) of the Act, I accept that the Tenant received the documents. The Tenant did not appear at the Hearing and the Hearing proceeded in her absence.

In the absence of any evidence to the contrary from the Tenant, the Landlord has established the Landlord's monetary claim for arrears in the amount of \$1,296.00 for the months of March and April, 2009.

The Landlord's agent stated that he was unaware of the Tenant's new address and would be content with an order that he could retain the security deposit paid by the Tenant. I make that order.

### **Conclusion**

The Landlord is entitled to retain the security deposit paid by the Tenant, together with any interest accrued thereon.

The Landlord's applications for an order of possession; for a monetary order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the application are dismissed without leave to re-apply.

May 12, 2009

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