

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** OPR, MNSD, MNDC, 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.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord’s agent gave affirmed evidence and this matter proceeded on its merits.

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

This is the Landlord’s application for an Order of Possession; a Monetary Order for unpaid rent; a Monetary Order for loss of rent; to keep all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of the application from the Tenants.

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order?
- (3) Is the Landlord entitled to recover the filing fee from the Tenant?
- (4) Is the Landlord entitled to keep all or part of the security deposit?

### **Background and Evidence**

#### **Landlord’s agent’s testimony**

The Landlord’s agent testified that he served the Tenant with the Notice to End Tenancy for Unpaid Rent or Utilities by leaving a copy of the Notice at the Tenant’s residence with an adult who apparently resides with the Tenant on April 6, 2009.

The Landlord's agent testified that he mailed the Tenant the Application for Dispute Resolution and hearing package on March 28, 2009, by registered mail, to the Tenant's residential address. The Landlord provided a copy of the registered mail receipt and tracking number. The Landlord's agent testified that the registered mail package was returned to him on April 30, 2009.

The Landlord testified that:

- The tenancy started on September 1, 2008. The monthly rent is \$650.00, due on the first day of the month. The Tenant paid a security deposit to the Landlord in the amount of \$325.00 on September 1, 2008.
- The Tenant remains in the rental unit.
- The Tenant has not paid rent for the month of April, 2009. The Landlord requested compensation for loss of rent for May and June, 2009.
- The Landlord asked for an Order of Possession and to recover the filing fee for the cost of the application from the Tenant.

### **Analysis**

I accept the Landlord's testimony that the Tenant was duly served with the Notice to End Tenancy. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, service was affected on April 6, 2009, and the effective end to the tenancy was therefore April 16, 2009.

Therefore, the Landlord is entitled to an immediate Order of Possession and I make that order.

I accept the Landlord's testimony that he personally served the Tenant with the Notice of Hearing Package and Application for Dispute Resolution, by registered mail to the

Tenant's residence, on March 28, 2009. Section 90 of the Act deems documents served in this manner to be received on the 5<sup>th</sup> day after mailing the document. In spite of being served with the document, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

Based on the testimony of the Landlord's agent, and the absence of any evidence to the contrary from the Tenant, the Landlord has established the Landlords' monetary claim for arrears in the amount of \$650.00 for April, 2009.

Based on the testimony of the Landlord's agent, and the absence of any evidence to the contrary from the Tenant, the Landlord has established the Landlords' monetary claim for loss of rent in the amount of \$650.00 for May, 2009. It is premature to allow the Landlord's claim for loss of rent for the month of June, 2009, and therefore I dismiss this portion of the Landlord's claim, with leave to re-apply.

The Landlord has been largely successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may deduct the security deposit, together with any accrued interest, in partial satisfaction of his monetary claim.

The Landlord has established a monetary order, as follows:

Rent arrears for April, 2009	\$650.00
Loss of rent for May, 2009	\$650.00
Recovery of the filing fee	\$50.00
Less security deposit and interest of \$1.62	<u>&lt;\$326.62&gt;</u>
TOTAL amount due to Landlord after set off	\$1,023.38
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## **Conclusion**

The Landlord's application for loss of rent for the month of June, 2009, is dismissed with leave to re-apply.

Under Section 55 of the Act, I grant the Landlord an Order of Possession **effective two days from service of the order**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$1,023.38 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

June 2, 2009

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