



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR, MNSD

### 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, and to retain all or part of the security deposit.

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 service address noted on the Application, on June 26, 2009. A tracking number was provided. The Canada Post website shows the mail was returned to the sender on August 21, 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 for the month of June of 2009; and to keep all or part of the security deposit, pursuant to sections 38, 55, and 67 of the *Act*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 01, 2003; that the Tenant is required to pay monthly rent of \$595.00; and that the Tenant paid a security deposit of \$275.00 on October 27, 2003.

The Agent for the Landlord stated that a Two Month Notice to End Tenancy for Landlord's Use of Property, which had an effective date of July 31, 2009, was served on the Tenant on May 07, 2009. He stated that on June 01, 2009 the Tenant advised the Landlord that he would be vacating the rental unit at the end of June. The Agent stated that the Tenant never provided written notice of his intent to vacate the rental unit prior to July 31, 2009.

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 June 06, 2009, was posted on the front

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door of the rental unit on June 03, 2009. The Notice indicated 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 still owes \$595.00 in rent from June of 2009.

The Agent for the Landlord stated that rent has not been paid for July or August of 2009. As the Application for Dispute Resolution does not declare that the Landlord is making a claim for rent from July or August, these claims were not considered at this hearing. The Landlord retains the right to file another Application for Dispute Resolution in which he seeks compensation for unpaid rent from these months, although the Landlord is strongly encouraged to review section 51 of the Act prior to filing another claim for unpaid rent for July of 2009.

The Agent for the Landlord stated that he does not believe the Tenant resided at the rental unit in June of 2009 but he does believe that he frequented the rental unit on a regular basis in June for the purposes of removing personal property.

The Agent for the Landlord stated that he met with the Tenant on July 15, 2009, at which time he offered to pay to have the Tenant's belongings moved from the rental unit. The Agent stated that the Tenant indicated that he wanted assistance with moving his personal belongings but that he never contacted the Landlord after July 15, 2009 to make those arrangements. He stated that the Tenant still has a small amount of personal items in the rental unit and that he has still not returned the keys.

## Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord, and that the Tenant was required to pay monthly rent of \$595.00 during the latter portion of the tenancy.

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. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$595.00 that was due on June 01, 2009, and that the Landlord is entitled to compensation in that amount.

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Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the front door of the rental unit on June 02, 2009, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on June 05, 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 June 05, 2009, I find that the earliest effective date of the Notice is June 15, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 15, 2009.

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 ended on June 15, 2009.

In the absence of evidence that shows the Tenant gave the Landlord written notice of his intent to vacate the rental unit on June 30, 2009, I am unable to conclude that the Tenant ended this tenancy in accordance with section 50(1) of the *Act*. Section 50(1) of the *Act* authorizes tenants to end a tenancy with ten days written notice anytime after they receive a Two Month Notice to End Tenancy for Landlord's Use of Property.

As the Tenant did not give proper notice of his intent to vacate the rental unit; he still has personal property in the rental unit; and he still possesses the keys to the rental unit, I find it appropriate to grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$284.74, in partial satisfaction of the monetary claim.



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## 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 \$595.00, in compensation for rent from June of 2009. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$284.74, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$310.26. 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: August 10, 2009.

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Dispute Resolution Officer