



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy commenced six years ago and the tenant current pays monthly rent of \$550.00, due by the first day of each month.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 13, 2009, was served on June 3, 2009. During the hearing the tenant confirmed receipt of the Notice on that date. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$210.00 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 filed an Application for Dispute Resolution within five days.

The tenant testified that he gave the landlord \$450.00 cash for June rent at some point later in June and stated that the landlord only recorded receipt of \$400.00. The landlord provided copies of two receipts showing payment on July 1, 2009 of \$550.00 for use and occupancy only and a July 2, 2009 receipt for a \$210.00 payment; this receipt does not indicate for use and occupancy only. The landlord testified that August rent was paid on time and that a receipt for use and occupancy only was issued. The landlord testified that she has had repeated problems with the tenant paying rent late and that she has given him warnings that rent is due on the first day of each month. During the hearing the tenant expressed no expectation that the landlord's intent to evict him had been waived.

The landlord requested an Order of possession effective August 31, 2009.

### Analysis

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 13, 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 **August 31, 2009 at 1:00 pm**.

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.

The landlord has not applied to retain any deposit that may have been paid by the tenant. Any deposit paid is held in trust by the landlord and must be disbursed as determined by section 38 of the *Act*.

### Conclusion

The landlord has been granted an Order of possession that is effective **August 31, 2009 at 1:00 pm**. 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 \$50.00, which is comprised of the \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. 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.

Dated August 06, 2009.

---

Dispute Resolution Officer