



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, 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 for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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 address noted on the Application, on September 19, 2009 or September 20, 2009. The Landlord submitted no evidence to corroborate this statement but he said that he spoke with the Tenant on September 22, 2009 or September 23, 2009, at which time the Tenant acknowledged receipt of the documents. In the absence of evidence to the contrary, I find that these documents 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; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord stated that this tenancy began on December 15, 2008; that the Tenant was required to pay monthly rent of \$990.00 on the first day of each month; and that the Tenant paid a security deposit of \$495.00 on December 14, 2008.

The Landlord stated that he did not have a copy of the Ten Day Notice to End Tenancy for Unpaid Rent with him so he is unable to refer to it at the hearing. The Landlord submitted a Ten Day Notice to End Tenancy for Unpaid Rent, which is signed and dated September 02, 2009. The Landlord stated that he personally served this Notice to the

Tenant on September 02, 2009. The Notice does not declare the date when the Tenant must vacate the rental unit. The address of the rental unit is inserted on the Notice at the location where the effective date is to be inserted.

At the hearing the Landlord stated that the Tenant owes \$685.00 in rent from August of 2009; \$990.00 in rent from September of 2009; \$990.00 in rent from October of 2009; and \$990.00 in rent from November of 2009. In the Application for Dispute Resolution the Landlord declared that the Tenant owed \$685.00 in rent on September 18, 2009 “plus October rent” of \$990.00. On the Ten Day Notice to End Tenancy the Landlord declared that the Tenant owed \$685.00 in rent on September 01, 2009. In a letter to the Tenant, dated September 01, 2009, the Landlord declared that the Tenant owes \$685.00 and requests that it be paid by September 05, 2009. The Landlord was given several opportunities to explain the inconsistencies between the documentary evidence and his testimony at the hearing, and he remained adamant that the Tenant owed \$685.00 from August of 2009 and \$990.00 in rent from September of 2009. He stated that he did not have a ledger with him to support his testimony although he was adamant that the information on the Application for Dispute Resolution and the Notice to End Tenancy were incorrect.

## Analysis

Based on the evidence provided by the Landlord, and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires him to pay monthly rent of \$990.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

I find that the Tenant has not paid rent in the amount of \$685.00 for the month of September; \$990.00 in rent for the month of October of 2009; and \$990.00 in rent for the month of November of 2009. I favour the documentary evidence over the oral testimony of the Landlord, in part, because the Notice to End Tenancy was consistent with the Application for Dispute Resolution, which were created on different days, and, in part, because the Landlord did not have any documents with him at the hearing, apart from the Application for Dispute Resolution that he relied upon when giving evidence. In these circumstances, I find that the Landlord was basing his evidence on his memory, which I find is less reliable than the documents that were submitted.

As tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,665.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy

Residential Tenancy Branch  
Ministry of Housing and Social Development

must state the effective date of the notice. In the circumstances before me I find that the Ten Day Notice to End Tenancy did not state the effective date of the Notice. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(c) of the *Act*. As the Ten Day Notice to End tenancy was not effective, I hereby set aside that Notice and dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to file another Ten Day Notice to End Tenancy if the outstanding rent is not paid.

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.

## Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,715.00, which is comprised of \$2,665.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

As this tenancy has not ended I will not be off offsetting this monetary award with the Tenant's security deposit, however both parties are hereby advised that the Landlord has the authority to retain any amount of this award that remains unpaid at the end of the tenancy from the security deposit, pursuant to section 38(3) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,715.00. 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: November 04, 2009.

---

Dispute Resolution Officer