



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord #2 stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on November 19, 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; 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 Agent for the Landlord #3 stated that this tenancy began on December 01, 2007; that the rent for the rental unit at the beginning of the tenancy was \$765.00; that it was increased to \$785.00 on December 01, 2008; that it was increased to \$800.00 on December 01, 2009; and that rent was due on the first day of each month.

At the hearing the Agent for the Landlord #3 stated that the Tenant did not pay any rent for September, October, November, or December of 2009.

The Agent for the Landlord #1 stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 15, 2009, through the mail slot in the Tenant's door on November 05, 2009. The Notice declared that the Tenant owed \$1,895.00 in rent that was due on November 01, 2009.

In the Application for Dispute Resolution the Landlord declared that the Tenant owed \$2,730.00, which included unpaid rent from December of 2009. At the hearing the Agent for the Landlord #3 declared that there was a miscalculation and that the amount claimed on the Application for Dispute Resolution should have been \$2,745.00.

### 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 required the Tenant to pay rent of \$785.00 for the months of September, October, and November of 2009 and rent of \$800.00 for December of 2009, and that rent was due on the first day of each month.

In his oral testimony the Agent for the Landlord #3 declared that the Tenant owed rent of \$2,355.00 from September, October, and November of 2009. This is inconsistent with the information contained on the Notice to End Tenancy, which declared that the Tenant only owed \$1,895.00 on November 01, 2009.

This information is also inconsistent with the information contained on the Application for Dispute Resolution. If the Tenant owed \$2,355.00 in rent on November 01, 2009, as stated by the Agent for the Landlord at the hearing, the amount claimed on the Application for Dispute Resolution, after adding the rent from December of 2009 plus the filing fee of \$50.00, would have been \$3,155.00. If the Tenant owed \$1,895.00.00 in rent on November 01, 2009, as stated on the Application for Dispute Resolution, the amount claimed on the Application for Dispute Resolution, after adding the rent from December of 2009 plus the filing fee of \$50.00, would have been \$2,745.00. The amount claimed on the Application for Dispute Resolution was \$2,730.00, although the Agent for the Landlord #3 stated that it should have been \$2,745.00.

I find that the written evidence regarding the amount of rent that is due is more reliable than the oral evidence provided at the hearing, as the amounts noted on the Notice to End Tenancy and the Application for Dispute Resolution are consistent with each other, with the exception of a miscalculation of \$15.00. On this basis, I accept the written evidence that the Tenant owed \$1,895.00 in rent on November 01, 2009 and I reject the oral evidence that the Tenant owed \$2,385.00 in rent on November 01, 2009. I also accept that the Tenant owed \$800.00 in rent from December of 2009.

As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,695.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by November 15, 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 two days after the order is served upon the Tenant.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord 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 \$2,745.00, which is comprised of \$2,695.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,745.00. 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: December 29, 2009.

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Dispute Resolution Officer