



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**CNR, OPR, MNR, MNSD, FF**

### Introduction

This was a cross-Application hearing.

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, compensation for damage or loss, 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 tenant made Application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and for filing fee costs.

The Agent for the landlord stated that on March 26, 2010, she personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing at the rental unit, at 2:30 p.m.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matter

As the tenant did not attend this hearing to support her Application I found that the tenant's Application is dismissed.

The landlord testified that the tenant has now vacated the rental unit and withdrew the request for an Order of possession.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of revenue?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement required the tenant to pay monthly rent of \$1,695.00 by the first day of each month. The tenant paid a security deposit of \$850.00 on February 1, 2008.

The tenant was served with a Notice to End Tenancy which had an effective date of March 19, 2010. The tenant did not confirm that she was out of the rental unit until March 28, 2010, at which point it was too late for the landlord to locate new tenants for the first of April. The tenant had left belongings in the unit and up until March 28 the landlord had been denied possession of the unit.

The landlord has not received rent for February, March and was unable to locate renters for April 1, 2010. The landlord is claiming loss of revenue for April 1, 2010. The landlord has limited her claim for compensation to \$4,999.99.

### Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on March 19, 2010.

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 paid the rent. The tenant did apply to cancel the notice; however that Application has been dismissed and the tenant has moved out of the unit.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,390.00 for February, March, that the tenant is responsible to the loss of April rent revenue, and that the landlord is entitled to compensation in that amount, to the maximum claimed in the sum of \$4,999.99.

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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$861.67, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$5,049.99., which is comprised of \$4,999.99 in unpaid February and March rent, loss of April rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$861.67, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$4,188.32**. 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.

The tenant's Application is dismissed.

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: April 29, 2010.

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Dispute Resolution Officer