

## **DECISION**

### **Dispute Codes:**

**OP, MNR, MNSD, MNDC, 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, a monetary Order for unpaid rent, for damages to the rental unit, 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 provided affirmed testimony that on March 19, 2010, the tenant was served with Notice of this hearing via registered mail service to a postal box number where the tenant has been incarcerated. The landlord provided a Canada Post tracking number as evidence of this service.

The landlord provided a copy of a letter, sent in reply from the tenant, who acknowledged receipt of the Notice.

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**

The landlord has named the tenant's minor son as a respondent on the Application. This child's name has been deleted from the Application as the landlord confirmed that only the adult male was a tenant; the 2 children present are occupants.

As the tenant continues to possess the rental unit the portion of the claim requesting compensation for damages to the rental unit did not proceed. The landlord is at liberty to submit an Application in relation to damages.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession?  
Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid in partial satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This tenancy commenced November 1, 2009, rent is \$650.00 per month, due on the first day of the month. A deposit in the sum of \$325.00 was paid in the last week of October 2009.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 7, 2010, was posted to the tenant's door on March 7, 2010. During the hearing the landlord confirmed that the Notice contained only an effective vacancy date and had not been dated by the landlord.

The tenant has not paid rent for March, April and May, 2010; in the sum of \$1,950.00.

### Analysis

Section 52 of the Act provides the requirements for a Notice to End Tenancy:

*52 In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form.*

In the absence of a date of issue, I find that the Notice is of no force or effect. The landlord is at liberty to issue a valid Notice, to serve that Notice to the tenant and to submit an Application requesting an Order of possession.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,950.00 for March to May, 2010 inclusive, and that the landlord is entitled to compensation in that amount.

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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of **\$325.00** in partial satisfaction of the monetary claim.

I have enclosed a copy of the *Guide for Landlord's and Tenant's in British Columbia* for each party.

### Conclusion

The Notice to End Tenancy for unpaid March, 2010, rent is of no force or effect as it was not dated by the landlord. The request for an Order of possession is dismissed. The landlord is at liberty to issue and serve a valid Notice and to submit an Application requesting an Order of possession as provided by the Act.

I find that the landlord has established a monetary claim, in the amount of \$2,000.00, which is comprised of \$1,950.00 in unpaid March, April, May 2010, rent 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 \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,675.00. 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: May 04, 2010.

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Dispute Resolution Officer