



# Dispute Resolution Services

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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 agent for the landlord provided affirmed testimony that on April 16, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number and copy of the receipts were provided as evidence of service to each tenant at the rental unit address.

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

### Preliminary Matter

The Application was amended to include a claim for unpaid June, 2010, rent owed.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on August 1, 2005. A deposit in the sum of \$395.00 was paid on July 28, 2005. Rent is currently \$876.00 per month and is due on the first day of

each month. The landlord submitted a copy of the signed tenancy agreement as evidence.

The landlord stated that on March 16, 2010, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of March 26, 2010, was served by posting to the door at 3:17 p.m. by the agent. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$901.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord included fees of \$25.00 in the amount of rent owed entered on the Notice.

The landlord altered the notice issue and effective vacancy dates as it was pre-filled at the head office and was not served on the date originally indicated on the Notice.

The landlord is claiming \$25.00 NSF fees for each of March and April, as provided by clause 4 of the tenancy agreement. The cheques for both of those months were returned NSF.

The landlord has not received rent from March to June, inclusive and is claiming \$3504.00 in unpaid rent.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on March 19, 2010.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on March 19, 2010, I find that the earliest effective date of the Notice is March 29, 2010.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was March 29, 2010.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on March 29, 2010, 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 tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,504.00 for March to June, 2010, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to NSF fees for March and April, 2010, in the sum of \$50.00; as provided by the tenancy agreement, in compliance with the Regulation.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants 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 \$408.99, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. 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 \$3,604.00, which is comprised of \$3,504.00 in unpaid March to June, 2010 inclusive rent, March and April, 2010, NSF fees of \$50.00 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 \$408.99, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$3,195.01**. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: June 03, 2010.

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Dispute Resolution Officer