



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes:

OPR, MNR, MNDC, 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, a monetary Order for money owed or 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### 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 Agent for the Landlord and the Tenant agreed that this tenancy began on August 01, 2006; that the Tenant is currently required to pay monthly rent of \$679.00 on the first day of each month; and that the Tenant paid a security deposit of \$317.50 on January 20, 2004, which was transferred from a previous tenancy.

The Agent for the Landlord stated and the Tenant agreed that the Tenant did not pay any rent for January or February of 2011.

The Caretaker stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 17, 2011, on the door of the rental unit

on January 07, 2011. The Tenant acknowledged receiving the Notice, although he does not know the specific date he located the Notice on his door.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$679.00 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 for January and February of 2011. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,358.00 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 10 days if appropriate notice is given to the tenant. I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 07, 2011.

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 Tenant is deemed to have received the Notice to End Tenancy on January 10, 2011.

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 Tenant is deemed to have received this Notice on January 10, 2011, I find that the earliest effective date of the Notice is January 20, 2011.

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 January 20, 2011.

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.

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 at 1:00 p.m. on February 28, 2011. 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 \$1,408.00, which is comprised of \$1,358.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$317.50 plus interest of \$11.24, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,079.26. 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: February 07, 2011.

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Residential Tenancy Branch