



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened 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.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the rental unit on August 05, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. 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.

An unknown party dialed into the teleconference after the hearing commenced and exited the conference before I became aware of the individual's presence.

### 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 loss of revenue; 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 stated that this tenancy began on March 01, 2008; that the Tenant is currently required to pay monthly rent of \$950.00 on the first day of each month; and that the Tenant paid a security deposit of \$475.00 on March 01, 2008.

The Agent for the Landlord stated that the Tenant only paid \$700.00 in rent for June of 2011; \$650.00 in rent for July of 2011; and that no rent had been paid for August or September of 2011.

The Agent for the Landlord stated that she observed a co-worker post a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 30, 2011, on the front door of the rental unit on July 20, 2011.

### 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 and that the Tenant was required to pay rent of \$900.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$250.00 in rent from June of 2011. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$250.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted at the rental unit on July 20, 2011, which directed the Tenant to vacate the rental unit by July 30, 2011, pursuant to section 46 of the *Act*.

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 received the Notice to End Tenancy on July 23, 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 July 23, 2011, I find that the earliest effective date of the Notice was July 03, 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 July 03, 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.

As the Tenant remained in lawful possession of the rental unit on July 01, 2011 and she was required to pay rent on July 01, 2011, I find that she was obligated to pay rent of \$900.00 on July 01, 2011. As the Tenant only paid \$650.00 in rent for July of 2011, I

find that she still owes the Landlord \$300.00 in rent for July, pursuant to section 26 of the *Act*.

As the Tenant did not vacate the rental unit on July 03, 2011, I find that she is obligated to pay rent, on a per diem basis, for the days she remains in possession of the rental unit. As she has already been ordered to pay rent for the entire month of July, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the month of August of 2011, as she remained in possession of the rental unit for that month.

I also find that the Tenant must compensate the Landlord for rent for the period between September 01, 2011 and September 15, 2011, as the Tenant's continued possession of the rental unit will likely result in a loss of revenue for that period. I decline to award compensation for the entire month of September, as it is possible that the unit could be re-rented for September 15, 2011.

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.

### 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 \$1,950.00, which is comprised of \$1,900.00 in unpaid rent/loss of revenue 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 keep the Tenant's security deposit of \$450.00 plus interest of \$5.64, in partial satisfaction of the claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,494.36. 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: September 06, 2011.

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Residential Tenancy Branch