



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

## Introduction

The Agent for the Landlord stated that she personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on August 14, 2008. 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.

## 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; a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*; 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 *Act*.

## Background and Evidence

The Agent for the Landlord stated that the Tenant paid a security deposit of \$315.00 on March 01, 2007, that he paid a pet deposit of \$315.00 on March 01, 2007; and that he is required to pay monthly rent in the amount of \$665.00. The Agent for the Landlord stated that the written tenancy agreement requires the Tenant to pay a fee of \$25.00 if he is late paying monthly rent.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 13, 2008, was posted on the front door of the rental unit on August 02, 2008. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that the Tenant still owes \$665.00 in rent from August of 2008 and \$665.00 in rent from September. The Agent is also applying for a \$25.00 late payment fee because the Tenants paid their rent late in July, a \$25.00 late payment fee because the Tenants paid their rent late in August, and a \$25.00 late payment fee because the Tenants paid their rent late in September.

### 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 Tenant received the Notice to End Tenancy on August 05, 2008.

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 August 05, 2008, I find that the earliest effective date of the Notice is August 15, 2008.

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 August 15, 2008.

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 that is effective two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$665.00 for August of 2008. I also find that the Tenant is liable to pay rent for two-thirds of the month of September, as he will be occupying the rental unit for approximately that period, which I calculate to be \$443.33.

In the absence of evidence to the contrary, I find that the Tenant did agree to pay a late payment fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. In the absence of evidence to the contrary I also find that the Tenant was late paying rent in July, August, and September and that the Landlord is therefore entitled to three late fees of \$25.00.

I find that the Landlords 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 \$322.29, in partial satisfaction of the monetary claim. I find that the Landlord is not entitled to retain the Tenant's pet deposit in partial satisfaction of the monetary claim, as 38(7) of the Act stipulates that pet deposits can only be used to compensate for damages caused by pets.

### Conclusion

The Landlord has been granted 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 \$1,233.33, which is comprised on \$665.00 in unpaid rent for August; \$443.33 in unpaid rent for September; \$75.00 in late fees; 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 \$322.29, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$911.04. 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.

Date of Decision: September 11, 2008

---