



# Dispute Resolution Services

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

## Decision

**Dispute Codes:** MNR MNSD OPR 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 stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to both tenants via registered mail at the address noted on the Application, on November 25, 2008. Two tracking numbers were provided. The Canada Post website shows neither document was picked up. 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.

### 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 *Act*.

## **Background and Evidence**

The Agent for the Landlord stated that the Tenant is required to pay monthly rent of \$825.00 and that they paid a security deposit of \$412.50 on August 06, 2008.

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 November 19, 2008, was posted on the front door of the rental unit on November 06, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received the outstanding rent within five days after the Tenant is assumed to have received the Notice. The Notice also 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 tenants did pay \$1,225.00 towards their outstanding debts on December 01, 2008. She stated they paid an additional \$425.00 on December 05, 2008, leaving outstanding rent from November of 2008, in the amount of \$50.00, and outstanding rent from December of 2008, in the amount of \$825.00. The Agent stated that the tenants were sent written notification that the payments made in December were being accepted on the basis of use and occupancy only.

The Landlord is claiming compensation, in the amount of \$25.00 for paying rent late in December. In the tenancy agreement the tenants agreed to pay a fee of \$25.00 whenever they are late with a rent payment.

The Landlord is claiming compensation, in the amount of \$25.00 for a returned rent cheque from November. In the tenancy agreement the tenants agreed to pay an NSF

fee of \$25.00 whenever a cheque is returned by the bank due to insufficient funds payment.

### **Analysis**

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on November 19, 2008, 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 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.

In the absence of evidence to the contrary, I find that the Tenant owes the Landlord \$875.00 in unpaid rent.

In the absence of evidence to the contrary, I find that the Tenant was late in paying rent for November; that they have not yet paid the late fee that is due to the Landlord; and that the Landlord is entitled to compensation in the amount of \$25.00 for paying rent late in November.

In the absence of evidence to the contrary, I find that the Tenant's rent cheque for November was returned due to insufficient funds; that they have not yet paid the NSF fee that is due to the Landlord; and that the Landlord is entitled to compensation in the amount of \$25.00 for the NSF cheque.

As the Landlord is receiving full rent for December, I will grant the Landlord an Order of Possession that is effective at 1:00 on December 31, 2008.

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 \$414.66, in partial satisfaction of the monetary claim.

### **Conclusion**

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on December 31, 2008. 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 \$975.00, which is comprised on \$875.00 in unpaid rent, a \$25.00 NSF fee, a \$25.00 late payment fee, 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 \$414.66, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$560.34. 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.

Dated: December 11, 2008