



# 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 one of the Tenants via registered mail at the address noted on the Application, on November 21, 2008. A tracking number was provided. The Canada Post website shows the mail was not picked up by that Tenant. The Agent also stated that she personally served these documents on the second Tenant on November 21, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants 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 this tenancy began on May 01, 2007, that the Tenants are required to pay monthly rent of \$1,000.00, that the Tenants paid a security deposit of \$500.00 on April 24, 2007.

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 14, 2008, was posted on the front door of the rental unit on November 04, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$600.00 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 Tenant still owes \$600.00 in rent from November of 2008 and \$1,000.00 in rent from December of 2008.

### **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 November 07, 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 November 07, 2008, I find that the earliest effective date of the Notice is November 17, 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 November 17, 2008.

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 November 17, 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 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.

The Agent for the Landlord agreed to permit the Tenants to remain in the rental unit the end of December, in anticipation of the rent being paid for December. On this basis I will grant the Landlord an Order of Possession that is effective on December 31, 2008, and order that the Tenants pay rent for December of 2008.

In the absence of evidence to the contrary, I find that the Tenants have not paid rent in the amount of \$600.00 for November of 2008, and I find that the Tenants owe this amount.

I find that the Landlords application has merit, and I find 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 \$512.28, in partial satisfaction of the monetary claim.

### **Conclusion**

The Landlord has been granted an Order of Possession that is effective December 31, 2008. This Order may be served on the Tenants, 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 \$1,650.00, which is comprised on \$1,600.00 in unpaid rent 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 \$512.28, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,087.72. 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 08, 2008