



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding had insufficient evidence to conclude that the Ten Day Notice to End Tenancy was properly served on the Tenant.

The reconvened hearing was held to address 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that she posted copies of the Application for Dispute Resolution and Notice of Hearing on the front door of the rental unit on February 23, 2009, in the presence of a co-worker, who was not in attendance at the hearing. 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 a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Act*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on August 01, 2006 and that the Tenant is required to pay monthly rent of \$602.00.

The Agent for the Landlord stated that she personally posted a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 12, 2009

on the front door of the rental unit on February 02, 2009. The Agent stated that a co-worker, who was not present at the hearing, was present when she posted the Notice on the door. 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 pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord stated that the Tenant vacated the rental unit on February 28, 2009.

The Agent for the Landlord stated that the Tenant still owes \$262. in rent from September of 2008; \$602.00 in rent from October of 2008; \$602.00 in rent from November of 2008; \$602.00 in rent from December of 2008; \$602.00 in rent from January of 2009; and \$602.00 in rent from February of 2009.

### 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 February 05, 2009.

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 February 05, 2009, I find that the earliest effective date of the Notice is February 15, 2009.

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 February 15, 2009.

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 February 15, 2009, and that the Tenant did vacate the rental unit on February 28, 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$3,2727.00, and that the Landlord is entitled to compensation in that amount.

I find that the Landlord's 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.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,322.00, which is comprised on \$3,272.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$3,322.00. 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: March 13, 2009

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