



# **Dispute Resolution Services**

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

## **Decision**

**Dispute Codes:** OPR MNR MNSD FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served September 2, 2008. The landlord also sought a Monetary Order for the unpaid rent, and filing fee, and authorization to retain the security deposit in set off against the balance owed.

Despite being served with the Notice of Hearing sent by registered mail on September 19, 2008, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### **Issue(s) to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and the effective date, and whether a Monetary Order is due, the amount, and if the filing fee and off setting security deposit should be included.

### **Background and Evidence**

This tenancy began February 3, 2003. Rent is \$881 per month and the landlord holds a security deposit of \$410 paid on January 5, 2003.

During the hearing, the landlord gave evidence that the notice to end tenancy had been served when the tenant failed to pay the rent for September 2008 in full. While the tenant completed payment on September 17, 2008, it was beyond the five days within which it would have extinguished the notice, and the landlord issued a receipt for "use and occupancy only," indicating that the notice remained in effect.

At the time of the hearing, the tenant remained in arrears for the October rent by \$680. The landlord seeks a Monetary Order for that amount plus late fees of \$20 each for August, September and October.

### **Analysis**

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenant has not paid the rent and has not made application to dispute the notice.

Therefore, the landlord requested, and I find she is entitled to, an Order of Possession effective two days from service of it on the tenant. I further find that the landlord is entitled to a Monetary Order for the unpaid rent, late fees and filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

October rent shortfall	\$680.00
August late fee	20.00
September late fee	20.00
October late fee	20.00
Filing fee	50.00
Sub total	\$790.00
Less retained security deposit	- 410.00
Less interest (January 5, 2003 to date)	- 13.19
<b>TOTAL</b>	<b>\$366.81</b>

### **Conclusion**

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant, and a Monetary Order for \$366.81 for service on the tenant.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

Dated: October 15, 2008