



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR, MNR, FF

## Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding.

The Landlord sought to amend his application by including a claim for unpaid rent and /or loss of rent for January, 2009. The Tenants agreed to an amendment to include amounts for unpaid rent up to the date they claim they will be vacating the rental unit. As a result, the Landlord's claim is amended to include unpaid rent up to and including January 17, 2009.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?

## Background and Evidence

This tenancy started on October 1, 2008. Rent is \$1,150.00 per month payable on the 1<sup>st</sup> day of each month. The Landlord claims that the Tenants are in arrears of rent for December, 2008. The Landlord served the Tenants in person on December 2, 2008 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The Landlord said that the Tenants have not paid anything since he served them with the Notice to End Tenancy and now are in arrears of rent for January, 2009.

## Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted

that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than December 8, 2008 (as the 7<sup>th</sup> fell on a Sunday or a non-business day).

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. I also find that there was no agreement whereby the Landlord would allow the Tenants to pay the arrears later than the date indicated on the Notice. Consequently, pursuant to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, which is December 12, 2008.

The Landlord requested and I find he is entitled to an Order of Possession to take effect at 1:00 p.m. PST on January 31, 2009. I also find that the Landlord is entitled to recover rent arrears for December, 2008 in the amount of \$1,150.00 and pro-rated rent of \$630.64 for January 1-17, 2009. As the Parties' tenancy agreement provides for the payment of a late payment fee of \$25.00, I find that the Landlord is entitled to recover \$50.00 for the late payment of December, 2008 and January, 2009 rent as well as the \$50.00 filing fee for this proceeding. Consequently, the Landlord will receive a monetary order for the as follows:

Rent arrears December 2008:	\$1,150.00
Rent arrears January, 2009:	\$630.64
Late Payment fees:	\$50.00
Filing fee:	<u>\$50.00</u>
TOTAL:	\$1,880.64

### Conclusion

An Order of Possession effective January 31, 2009 and a Monetary Order in the amount of **\$1,880.64** have been issued to the Landlord and a copy of the Orders must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.