



# 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 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, 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 personally served on the Tenant on December 05, 2008. 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; 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 Landlord stated that the Tenant is required to pay monthly rent of \$1,300.00.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 24, 2008, was personally served on the Tenant on November 24, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,025.00 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 paid \$350.00 in rent after receiving the Notice to End Tenancy, but that the Tenant still owes \$500.00 in rent from October of 2008, \$525.00 in rent from November of 2008, and \$950 in rent from December of 2008.

### Analysis

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 24, 2008, I find that the earliest effective date of the Notice is December 04, 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 December 04, 2008.

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 December 04, 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. On this basis I will grant the Landlord an Order of Possession that is effective on December 31, 2008.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1,975.00, 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

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 \$2,025.00, which is comprised on \$1,975.00 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 that amount. 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: December 22, 2008.