



# 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 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.

At the beginning of the hearing the Landlord stated that the Tenant paid all of his outstanding debts on December 12, 2008, for which he was given a receipt that indicated the money was being accepted for "use and occupancy only". As the Tenant has paid all of his outstanding rent, the Landlord withdrew the application for a monetary Order for unpaid rent.

At the beginning of the hearing the Landlord stated that the Tenant compensated her for the cost of filing the Application for Dispute Resolution, so she withdrew the application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on November 28, 2008. A tracking number was provided. The Canada Post website shows the mail was delivered on December 02, 2008. These documents are deemed to have been served in accordance with section 89 of the *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 and to keep all or part of the security deposit.

### Background and Evidence

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 21, 2008, was placed in the Tenant's mail slot on November 11, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$748.00 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 Landlord stated that the Tenant did not pay the outstanding rent until December 12, 2008.

### Analysis

Section 90 of the *Act* stipulates that a document that is placed in a mail slot 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 14, 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 14, 2008, I find that the earliest effective date of the Notice is November 24, 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 24, 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 November 24, 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.

As the Tenant has paid rent, on the understanding that the payment was accepted for use and occupancy only, until the end of December, I will grant the Landlord an Order of Possession that is effective at 1:00 p.m. on December 31, 2008.

As the Landlord has not established a monetary claim, I hereby dismiss her application to retain any portion of the Tenant's security deposit.

### 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.

Date of Decision: December 15, 2008.