



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and 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 November 16, 2008. The landlord also sought 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 against the balance owed.

Despite being served with the Notice of Hearing, 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.

As authorized by section 64(3)(c) of the *Act*, I permitted the applicant to amend her application by correcting the monthly rent to \$728 per month and to request authorization to retain the security deposit in set off against the balance owed.

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

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and related fees and authorization to retain the deposits in set off.

## **Background and Evidence**

This tenancy began July 1, 1999. Rent is \$728 per month plus utilities and the landlord holds a security deposit of \$285 paid on or about July 1, 1999.

During the hearing, the landlord gave evidence that the notice to end tenancy had been served when the tenant had failed to pay the rent for October and November of 2008. She stated that, as this had been a long term tenancy with no previous concerns, she had fully expected the tenant would pay the arrears as stated.

However, at the time of the hearing, the tenant had not paid the arrears or the rent for December 2008 or January 2009 and had not been seen for about one month. She stated that her husband had had to enter the rental unit the previous week due to water leaks in the units above and, to all appearances, the tenant has abandoned the rental unit without notice. She said some furnishings and accumulated refuse remained.

## **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 at 1 p.m. on January 24, 2009. 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 plus \$25 late fee ( $\$728 + \$25 = \$753$ )	\$ 753.00
November rent plus \$25 late fee	753.00
December rent plus \$25 late fee	753.00
January rent plus \$25 late fee	753.00
Filing fee	50.00
Sub total	\$3,062.00
Less retained security deposit	- 285.00
Less interest (July 1, 1999 to date)	- 28.57
<b>TOTAL</b>	<b>\$2,748.43</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on January 24, 2009 and a Monetary Order for \$2,748.43 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.

The landlord did not have all of the utility bills at the time of the hearing, the potential loss of rent was not known, and the landlord been not been able to ascertain damages to the rental unit. Therefore, the landlord remains at liberty to make application on those claims when they are known and documented.

January 22, 2009

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Dispute Resolution Officer