



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** CNR

### **Introduction**

This application was brought by the tenant seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent served on December 1, 2008.

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

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside.

### **Background and Evidence**

This tenancy began November 1, 2008 under a fixed term rental agreement to October 31, 2009. Rent is \$3,500 per month and the tenant's cheque for the security deposit was returned NSF and remains unpaid.

During the hearing, the landlord gave uncontested evidence that the notice to end tenancy had been served after the tenant had not paid the rent for November or December of 2008. In the interim, the rent for January 2009 remained unpaid.

The tenant gave evidence that his income is derived from the financial markets and that he had suffered set backs due to the present economic downturn. However, he said that he was in the process of liquidating some assets and that he would be able to satisfy the rent arrears by Monday, January 12, 2009 at the latest.

## **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 concedes that the rent was not paid.

Therefore, I find that the Notice to End Tenancy is lawful and valid and cannot be set aside and the tenant's application is dismissed without leave to reapply.

Having heard that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which permits him to do so when a tenant's application to set aside a notice to end is dismissed.

The landlord requested, and I find he is entitled to, an Order of Possession effective January 12, 2009.

**Conclusion**

The landlord's copy of this decision is accompanied by the Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on January 12, 2009.

The landlord remains at liberty to make application for a Monetary Order for the unpaid rent and any damages as may be ascertained at the end of the tenancy.

January 5, 2009.

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Dispute Resolution Officer