



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** OPR, MNR, MNDC, FF

## **Introduction**

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent / compensation for lost rental income, and recovery of the filing fee. Both parties participated in the hearing and each gave affirmed testimony.

## **Issues to be Decided**

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the term of tenancy is from September 1, 2008 to August 31, 2009. Rent in the amount of \$850.00 is payable in advance on the first day of each month and a security deposit of \$425.00 was collected near the start of tenancy.

Arising from a disagreement between the parties in regard to compensation for an incident of flooding in the unit which occurred in December 2008, the tenant withheld payment of rent due on January 1, 2009. As a result, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent. Subsequently, however, the tenant paid rent in full for the month of February 2009.

The landlord submitted into evidence a copy of the 10 day notice dated January 14, 2009. The landlord attempted to deliver the notice in person to the tenant on this same day, however, the tenant declined to take delivery. The landlord then undertook to

serve the notice on the tenant by way of registered mail. The tenant confirmed that he took delivery of the notice on January 31, 2009.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice which was January 24, 2009. While the landlord would be entitled to an order of possession under these circumstances, pursuant to section 63 of the *Act*, the parties engaged in a conversation during the hearing in order to try to resolve the dispute.

Pursuant to section 63 of the *Act*, the parties achieved a resolution of the dispute. Specifically, as full and final settlement of all aspects of the dispute for both parties it was agreed as follows:

- that the landlord will set aside the 10 day notice to end tenancy;
- that the landlord will set aside his request for an order of possession and a monetary order;
- that the tenant will FORTHWITH deliver cheque payment to the landlord in the full amount of \$611.18; this amount is comprised of the following:
  - a) \$425.00 (rent due for January 2009)
  - b) \$161.18 (the tenant's 25% share of the BC Hydro invoice with billing date of December 23, 2008)
  - c) \$ 25.00 (the tenant's 50% share of the filing fee for this application)

- that in relation to the next BC Hydro invoice, the landlord will pay 10% “off the top” and, thereafter, the terms of the Residential Tenancy Agreement will apply whereby the landlord pays 75% of the account and the tenant pays 25% of the account.

Finally, as to the tenant’s inquiry around how to properly end a fixed term tenancy, the attention of the parties is drawn to sections 44 and 45 of the *Act*. Specifically, section 44(1)(b)(c) states:

44(1) A tenancy ends only if one or more of the following applies:

- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;

Section 45(2)(a)(b)(c) states:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

## **Conclusion**

Pursuant to the agreement between the parties, as above, I hereby order the tenant to pay the landlord FORTHWITH the full amount of **\$611.18**. The tenancy continues in full force and effect.

DATE: February 18, 2009

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Dispute Resolution Officer