



# 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 dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, retention of the security deposit in partial satisfaction of the claim, 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 month-to-month tenancy began on February 10, 1996. Currently, rent of \$842.00 is payable in advance on the first day of each month, and a security deposit of \$307.50 was collected at the outset of tenancy.

As of December 1, 2008, a portion of rent was overdue for November and all rent due for December was in arrears. Accordingly, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent. The landlord submitted into evidence a copy of the 10 day notice dated December 5, 2008 which was personally served on the tenants that same day. Presently, the parties agree that rent is outstanding in the total amount of \$1,764.00. This is comprised of \$80.00 (December 2008), \$842.00 (January 2009) and \$842.00 (February 2009).

## Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are 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 December 15, 2008. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find the landlord has established a claim for \$1,814.00. This is comprised of overdue rent for December 2008 of \$80.00, overdue rent for January 2009 of \$842.00, overdue rent for February 2009 of \$842.00 and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$307.50 plus interest of \$49.82, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,456.68 (\$1,814.00 - \$357.32).

During the hearing the landlord said he was prepared not to enforce an order of possession or a monetary order if the tenants pay the full amount due (including the filing fee) of \$1,814.00 by no later than midnight, Monday, February 16, 2009.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,456.68**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 9, 2009

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Dispute Resolution Officer