



# **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 10-day Notice to End Tenancy for unpaid rent served January 5, 2009. The landlord also sought a Monetary Order for the unpaid rent, and filing fee for this proceeding and 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 the effective date, and whether a Monetary Order is due, the amount, and if the landlord may retain the security deposit in set off.

### **Background and Evidence**

This tenancy began November 1, 2008. Rent is \$1,400 per month and the landlord holds a security deposit of \$700 paid on November 1, 2008.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for January 2009. In the interim, the tenant remains in the rental unit and has not paid rent for February.

## **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.

As the tenant gave evidence that he is in the process of moving and requested more time, the landlord agreed to permit him until January 8, 2009 to complete the move out and the Order of Possession will take effect on that date..

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, filing fee for this proceeding and authorization to retain the security deposit in set off.

As the landlord stated that, if the rental unit is left in good condition, she may be able to get new tenants by February 15, 2009. Therefore, the Monetary Order will be for rent for the full month of January and half of February. If the landlord is unable to find a new tenant for mid-February, she is at liberty to make application for the additional loss of rent and any damages as may be ascertained at the end of the tenancy.

At present, I find that the tenant owes an amount to the landlord calculated as follows:

January 2009 rent	\$1,400.00
One-half of February 2009 rent	700.00
Filing fee	50.00
Sub total	\$2,150.00
Less retained security deposit	- 700.00
Less interest (November 1, 2008 to date)	- 1.75
<b>TOTAL</b>	<b>\$1,448.25</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on January 8, 2009 and a Monetary Order for \$1,448.25.

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.

February 4, 2009

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Dispute Resolution Officer