



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for loss of rental income as well as to recover the filing fee for this proceeding.

The Landlord served the Tenants by registered mail on January 29, 2009 with a copy of her Application (and amended Application) and Notice of Hearing in this matter. The Landlord said the documents were mailed to the rental unit address. According to the Canada Post on-line tracking system, a Notification Card was left for the Tenants, however, they did not pick up the hearing package. I find that the Tenants were properly served pursuant to s. 89 of the Act with the Notice of Hearing and the hearing proceeded in their absence.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?

## Background and Evidence

This tenancy started on December 1, 2008. Rent is \$1,600.00 per month payable on the 1<sup>st</sup> day of each month plus utilities. The Landlord said the Tenants did not pay rent for January, 2009. The Landlord said she tried to contact the Tenants but they would not return her calls. Consequently, the Landlord said she left the Tenants a message that she would be serving them with a Notice to end Tenancy. On January 9, 2009 the Landlord sent the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities by Registered Mail. According to the Canada Post on-line tracking system, a Notification Card was left for the Tenants, however, they did not pick up the mail. The Landlord said the Tenants are now in arrears of rent for February, 2009 and have not paid their security deposit.

## Analysis

Under s. 88 of the Act, a Notice to End Tenancy may be served by registered mail and under s. 90 of the Act, the Notice is deemed to have been received by the Tenants 5

days after it was mailed, or in this case, on January 14, 2009 (even if the Tenants do not pick it up). Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than January 19, 2009.

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on January 24, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that she is entitled to an Order of Possession to take effect on February 20, 2009. I also find that the Landlord is entitled to recover rent arrears for January, 2009 in the amount of **\$1,600.00**, unpaid rent for February 1 - 20, 2009 in the prorated amount of **\$1,142.86**, a loss of rental income for February 21 – 28, 2009 in the amount of **\$457.14**. As the Landlord has been successful in this matter, I also find she is entitled to recover her registered mail expenses of **\$17.50** as well as the **\$50.00** filing fee for this proceeding. In summary, the Landlord will receive a monetary order as follows:

Rent arrears for January, 2009:	\$1,600.00
Rent arrears Feb. 1 – 20/09:	\$1,142.86
Loss rental income Feb. 21-28/09:	\$457.14
Registered Mail Expenses:	\$17.50
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,267.50

### Conclusion

The Landlord's application for unpaid utilities is dismissed with leave to re-apply. An Order of Possession effective on **February 20, 2009** and a Monetary Order in the amount of **\$3,267.50** have been issued to the Landlord and a copy of the Orders must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.