



# 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 Landlords for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. The Landlords also applied to keep all or part of a security deposit.

The Landlords served the Tenant in person on January 27, 2009 with a copy of the Application and Notice of Hearing in this matter. I find pursuant to s. 89 of the Act that the Tenant was properly served with notice of this hearing and the hearing proceeded in his absence.

## Issue(s) to be Decided

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

## Background and Evidence

This month to month tenancy started on July 1, 2008. Rent is \$489.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$244.50 on July 1, 2008. The Landlords said the Tenant did not pay rent for January, 2009 when it was due and as a result, the Landlords served the Tenant in person on January 2, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 2, 2009. The Landlords said the Tenant made a payment of \$1,000.00 on his rent arrears, however, they did not reinstate the tenancy. The Landlords said that the Tenant is currently in arrears of rent for February, 2009 in the amount of \$167.00 and has not paid rent for March, 2009.

## Analysis

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 Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than January 7, 2009.

I find that the Tenant did not pay the amount indicated on the Notice within the time limit required under the Act and did not apply for dispute resolution. Consequently, pursuant to section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date, or on January 12, 2009. The Landlords requested and I find pursuant to s. 55(2)(b) of the Act that they are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlords are entitled to recover unpaid rent for February, 2009 in the amount of \$167.00 and for the period, March 1 – 10, 2009 in the amount of \$157.74. The Landlords are also entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

February, 2009 unpaid rent:	\$167.00
Unpaid rent (Mar 1-10/09):	\$157.74
Filing fee:	<u>\$50.00</u>
Subtotal:	\$374.74
Less: Security deposit:	(\$244.50)
Accrued interest:	<u>(\$1.84)</u>
Balance owing:	\$128.40

### Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$128.40** have been issued to the Landlords and a copy of the Orders must be served on the Tenant. 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.