



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR, MT, CNR, MNR, MND, MNDC, MNSD, RP, PSF, RR, FF

## Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for damages to the rental unit, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit. The Tenant applied to extend the time to apply to cancel a Notice to End Tenancy for unpaid rent, for an order that the Landlord make repairs and provide services and facilities required by law and that he be allowed to deduct the cost of repairs or the cost of services and facilities from his rent.

## 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?
3. Is the Landlord entitled to compensation for damages?
4. Is a repair order necessary?
5. Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?

## Background and Evidence

This tenancy started on July 1, 1994. Rent is \$762.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$302.50 on July 1, 1994. The Landlord said the Tenant did not pay rent for February, 2009 when it was due and as a result on February 2, 2009, the resident manager served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 2, 2009. The Parties agree that the Tenant has not paid rent for February, March and April, 2009.

The Tenant said that he was late filing his application to set aside the 10 Day Notice because there were many unfortunate events going on with his family at the time and at the same time he experienced an interruption with his monthly source of income. The

Tenant said he was also hospitalized for approximately 2 weeks but he could not recall when that had occurred.

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 February 7, 2009.

The Tenant filed his application on February 23, 2009. Section 66(3) of the Act says that the director may not extend the time for a Tenant to apply to cancel a Notice to End Tenancy later than the effective date of the Notice. The effective date of the Notice in this case was February 12, 2009. As the Tenant filed his application after the effective date of the Notice, his application for an extension to apply to cancel the Notice is dismissed. In any event, the Tenant admitted that he has not paid the rent arrears on the Notice and his application to cancel the Notice would also be unsuccessful for that reason.

The Landlord requested and I find pursuant to s. 55(1)(b) of the Act that he is entitled to an Order of Possession to take effect on April 20, 2009. I also find that the Landlord is entitled to recover rent arrears for February, March, 2009 in the amount of \$1,524.00, and rent arrears and a loss of rental income for April, 2009 in the amount of \$762.00 as well as the **\$50.00** filing fee for this proceeding. I also find the Landlord is entitled to recover 3 late fees of \$20.00 each as provided for in the tenancy agreement. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

February 2009 rent arrears:	\$762.00
March 2009 rent arrears:	\$762.00
April 2009 rent/loss of rent:	\$762.00
Late fees:	\$60.00
Filing fee	<u>\$50.00</u>
Subtotal:	\$2,396.00
Less: Security deposit:	(\$302.50)
Accrued interest:	<u>(\$64.44)</u>
Balance owing:	\$2,029.06

The Tenant abandoned his applications for an order that the Landlord make repairs or provide services or facilities required by law and that his rent be reduced to account for repairs or services or facilities not provided.

### Conclusion

The Tenant's application is dismissed. An order of Possession effective April 20, 2009 and a Monetary Order in the amount of \$2,029.06 have been issued to the Landlord 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. The Landlord's application for damages to the rental unit is dismissed with leave to re-apply.