



# Dispute Resolution Services

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

Dispute Codes: OPR, MNR, MNDC, (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 compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. At the beginning of the hearing the Landlord also applied to amend the application to include a claim to keep all or part of a security deposit. I find that it would serve no purpose to make the Landlord re-apply for this relief and would likely result in an additional filing fee being passed off to the Tenants. Consequently, the Landlord's application to add this claim is granted.

The Landlord served the Tenants by registered mail on January 21, 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 Tenants were properly served with notice of this hearing and the hearing proceeded in their absence.

## Issue(s) to be Decided

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

## Background and Evidence

This month to month tenancy started on June 1, 2003. Rent is \$800.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$400.00 on May 2, 2003. The Landlord said the Tenants did not pay rent for January, 2009 and as a result, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the Tenants' door on January 6, 2009. The Landlord said the Tenants have not paid any amounts since being served with the Notice are now in arrears of rent for February, 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. Pursuant to s. 90 of the Act, the Tenants were deemed to receive the 10 Day Notice 3 days after it was posted or on January 9, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than January 14, 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), they are conclusively presumed to have accepted that the tenancy ends on the effective date, or on January 19, 2009. The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that he is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for January, 2009 and for the period, February 1 – 10, 2009 as well as a loss of rental income for February 11 – 14, 2009. Should the Landlord be unable to re-rent the rental unit for the balance of February, 2009, the Landlord may apply for loss or rental income for that period as well. The Landlord is also entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord 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 Landlord will receive a monetary order for the balance owing as follows:

January, 2009 unpaid rent:	\$800.00
Unpaid rent (Feb 1-10/09):	\$285.71
Loss rental income to February 14, 2009:	\$114.29
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,250.00
Less: Security deposit:	(\$400.00)
Accrued interest:	<u>(\$14.16)</u>
Balance owing:	\$835.84

### Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$835.84** 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.