

DECISION

Dispute Codes: OPB, OPR, MNR, FF

This hearing dealt with an application by the landlord for an order of possession and a monetary order.

The tenant said that she submitted evidence containing a document titled certificate of pending litigation to the Residential Tenancy Branch. I did not receive this document until after the hearing concluded. During the hearing, the tenant was unable to confirm as to whether she had served the landlord with the same evidence. Rule 3 of the Residential Tenancy Branch Rules of Procedure states that all evidence accepted by the Residential Tenancy Branch must be served on the other party. The tenant had failed to do so. Therefore, I have not accepted this document as supporting evidence for this hearing.

On March 25, 2008, the landlord collected a security deposit from the tenant in the amount of \$1750.00. The tenancy began on April 1, 2008 for a fixed term ending on March 31, 2009. Rent in the amount of \$3500.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of January, 2009 and on January 8, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the months of February and March.

Based on the landlord's testimony, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be

filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is seeking to recover from the tenant outstanding rent for the month of January in the amount of \$3500.00. The tenant is currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income for the months of February and March in the amount of \$7000.00. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while she was still in residence and I allow the claim for a further \$7000.00.

As for the monetary order, I find that the landlord has established a claim for \$3500.00 in unpaid rent and \$7000.00 in loss of income. The landlord is also entitled to recovery of the \$100.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$10,600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 04, 2009.