

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent and utilities served in person on August 24, 2009. The landlord also sought a Monetary Order for the unpaid rent and utilities, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

In addition, I have exercised my discretion under section 64(3)(c) of the *Act* to permit the landlord to amend the application to include unpaid rent and utilities accumulated since the Notice was served and since this application was made.

Despite having been served with the Notice of Hearing by registered mail sent on September 4, 2009 and subsequently served in person, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent, utilities and filing fee and authorization to retain the security deposit in set off against the balance owed.

## **Background and Evidence**

This tenancy began on November 15, 2008 under a 12-month fixed term agreement. Rent is \$850 per month and the rental agreement includes the provision that the tenant is responsible for three-quarters of the utilities. The landlord holds a security deposit of \$425 paid on November 12, 2008 but a required pet damage deposit was never paid.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served on when the tenant had failed to pay rent or utilities for June, July and August 2009. In the interim, the tenant has not paid rent for September or October, but made a payment of \$850 on September 11, 2009 which satisfied the June rent.

In addition, she made a payment of \$114.32 against an accumulated shortfall on utilities owed of \$532, but in the interim has accumulated an additional \$67.50 owed for the gas bill. The landlords submitted copies of the hydro and gas bills in question.

## **Analysis**

Section 46 of the *Act*, which deals with notice to end tenancy for unpaid rent, provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice.

In this instance, I find that the tenant has not made application to dispute the Notice to End, the rent arrears was not paid within five days of receipt of the notice and the rent for July, August, September and October, and utilities remain unpaid.

Therefore, the landlord requested, and I find they are entitled to, an Order of Possession effective two days from service of it upon the tenant.

I further find that the landlords are is entitled to a Monetary Order for the unpaid rent and utilities and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

July rent	\$ 850.00
August rent	850.00
September rent	850.00
October rent	850.00
Unpaid utilities (\$532 + \$67.50 – \$114.32)	485.18
Filing fee	50.00
Sub total	\$3,935.18
Less retained security deposit	- 425.00
Less interest (November 12, 2008 to date)	- 0.87
<b>TOTAL</b>	<b>\$3.509.31</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and a Monetary Order for **\$3.509.31** for service on the tenant.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

The landlords remain at liberty to make application for compensation for any damages as may be ascertained at the conclusion of the tenancy.