

## **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 served by posting on September 5, 2009. The landlord also sought a Monetary Order for unpaid rent and utilities and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing served in person on September 24, 2009, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 unpaid rent and utilities and recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on August 27, 2009 and rent was \$455 per month. At the commencement of the tenancy, the tenant agreed to pay \$70 pro rated rent for the balance of August and he paid \$100 of the security deposit.

During the hearing, the landlord gave evidence that the tenant had paid the September rent in instalments, making the final payment on September 24, 2009, outside the five day period within which payment would have extinguished the Notice to End Tenancy.

The landlord stated that when he visited the rental unit on October 15, 2009, the tenant was in the process of moving out, but a few belongings and refuse had been left behind. The tenant had not given notice and told the landlord on that occasion that he would not pay the rent for October.

The landlord also gave evidence that the tenant's share of the gas bill to October 15, 2009 was \$15.36 and that it had not been paid.

## **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. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy ends on the date set out in the notice. That end date was September 15, 2009 on the notice, but was corrected to September 18, 2009 to account for the three day service period for posted notice under section 89 of the *Act*.

In this instance, I find that the tenant has not made application to dispute the Notice to End and the rent arrears was not paid within five days of receipt of the notice.

Therefore, the landlord requested, and I find he is entitled to, an Order of Possession. In consideration of the apparent abandonment of the rental unit, I find that the Order of Possession should take effect at 1 p.m. on November 6, 2009.

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

October 2009 rent	\$455.00
Unpaid gas bill	15.36
August pro rated rent	70.00
Filing fee	50.00
Sub total	\$590.36
Less retained security deposit (no interest due)	- 100.00
<b>TOTAL</b>	<b>\$490.36</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on November 6, 2009.

In addition, the landlord is also issued with a Monetary for \$490.36, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for loss of rent for November when the duration has been confirmed, the balance of unpaid utilities when the invoices

become available and other such losses or damage as may be ascertained when he regains possession of the property.