

## **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 placement in the tenants' mail box on October 6, 2009. The landlord also sought a Monetary Order for unpaid rent 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 October 16, 2009, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their 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 recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on July 10, 2009. Rent is \$1,100 per month and the landlord holds a security deposit of \$550 paid on July 10, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the full rent for October 2009 and continues to have a rent shortfall of \$876 for the month.

In the interim, the tenant has not paid the rent for November 2009 and the landlord seeks an order for the loss of rent for December 2009.

## **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 October 16, 2009 on the notice, but was corrected to October 19, 2009 to account for the three day service period for posted notice under section 90 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 she is entitled to, an Order of Possession effective two days from service of it on the tenants.

While I cannot foresee when the tenant will vacate and when the unit may be rented again, I cannot award the loss of rent for December. However, I do find that the landlord is entitled to a Monetary Order for the rent shortfall for October, the full rent for

November and the filing fee for this proceeding, and authorization to retain the security deposit in set off as follows:

October 2009 rent shortfall	\$ 876.00
November 2009 rent	!,100.00
Filing fee	50.00
Sub total	2,026.00
Less retained security deposit (no interest due)	- 550.00
<b>TOTAL</b>	<b>\$1,476.00</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 two days from service of it on the tenants.

Also, in addition to authorization to retain the security deposit in set off, the landlord is granted a Monetary for \$1,476.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for loss of rent when the precise amount is known and any damages as may be ascertained at the end of the tenancy.