

## **DECISION**

**Dispute Codes:**      Landlord:      OPR, OPC, MNR and FF  
                                 Tenant:      CNC and CNR

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of November 10, 2009, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 2, 2009 and a one-month Notice to End Tenancy cause served on October 31, 2009. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding and loss of rent for December. The landlord expressly declined to request authorization to retain the security deposit in set off against any balance owed for unpaid rent.

By application of November 6, 2009, the tenant sought to have both Notices to End Tenancy set aside.

### **Issues to be Decided**

This matter requires a decision on whether the Notices to End Tenancy should be upheld or set aside, and whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent and recovery of the filing fee.

## **Background and Evidence**

This tenancy began August 1, 2009 under a fixed term rental agreement to July 31, 2010. Rent was \$1,000 per month plus \$125 per month for utilities. The landlord holds a security deposit of \$500 paid on October 26, 2009.

As a matter of note, the landlord was issued with an Order of Possession effective in two days from service on October 28, 2009, but declined to enforce the order as the tenant had paid the outstanding rent for September and October, the security deposit and part of the November rent.

However, when the tenant failed to pay the balance of the November rent, \$825, due on November 1, 2009, he issued the Notice to End Tenancy for unpaid rent the following day.

The tenant concurred that the outstanding rent remained unpaid at the time of the hearing, but gave evidence that she believed the landlord had accepted that it would take her some time to catch up, an assertion challenged by the landlord.

## **Analysis**

Section 46 of the *Act* provides that a landlord may issue a 10-day Notice to End Tenancy on any day after unpaid rent is due. The tenant may render the notice of no effect by paying the overdue rent within five days of receiving the notice.

In this instance, I find that the rent shortfall was not paid within five days and that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

Having so determined, I find that the Notice to End Tenancy for cause is moot and need not be addressed in this hearing and the tenant's application is dismissed.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for November 2009 in the amount of \$825 and recovery of the \$50 filing fee for this proceeding for a total of \$875.

As to the landlord's claim for loss of rent for December and other future potential claims, I cannot foresee precisely what losses the landlord will suffer and, therefore, dismiss this part of his application with leave to reapply when he is able to provide an accurate accounting.

## **Conclusion**

Thus, the landlord's copy of this decision is accompanied by an Order of Possession, to take effect two days from service of it on the tenant and a Monetary Order for \$875.

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.