

## **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 in person on September 4, 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.

At the commencement of the hearing, the landlord advised that the rent had been brought up to date and amended the monetary claim to recovery of the filing fee only.

Despite having been served with the Notice of Hearing served in person on September 16, 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 recovery of the filing fee for this proceeding.

## **Background and Evidence**

Although he did not have the precise date at hand, the landlord gave evidence that this tenancy, one of six rooms/living units in the rental building, began in the spring of 2009. Rent is \$300 per month and the landlord holds a security deposit of \$150.

The landlord stated that the Notice to End Tenancy had been served when the tenant had failed to pay the rent for September 2009. He stated that the tenant had paid the rent on September 17, 2009, beyond the five days within which payment would have extinguished the Notice to End Tenancy.

The landlord stated that the tenant is aware that in accepting payment, the landlord did not intend to reinstate the tenancy due to ongoing concerns over late payment of rent and the tenant's chain smoking, among others. Rent has been paid for October and November

## **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 which was September 12, 2009 but would have self corrected to 10 days after service, or September 14, 2009..

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 effective at 1 p.m. on November 30, 2009. As the application has succeeded, I find that landlord is entitled to a recover the filing fee for this proceeding from the tenant

## **Conclusion**

Thus, 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 30, 2009 for service on the tenant.

In addition, I hereby authorize and order that the landlord may retain \$50 from the tenant's security deposit in recovery of the filing fee for this proceeding.