

## **Decision**

**Dispute Codes:** OPR

### **Introduction**

This hearing dealt with an application from the landlord for an order of possession for unpaid rent. The landlord participated in the hearing and gave affirmed testimony. Despite being served in person on November 16, 2009 with the application for dispute resolution and notice of hearing, the tenant did not appear.

### **Issue to be decided**

- Whether the landlord is entitled to an order of possession

### **Background and Evidence**

There is no written residential tenancy agreement in place for this month-to-month tenancy which began during the first half of 2009. Rent in the amount of \$750.00 is payable in advance on the first day of each month, and a security deposit of \$375.00 was collected near the outset of tenancy.

Arising from rent which was unpaid when due on November 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 2, 2009. The notice was served in person on the tenant on November 3, 2009. A copy of the notice was submitted into evidence. Subsequently, the tenant made no payment toward rent and she continues to reside in the unit.

As a result of letters to the landlord from the tenant dated September 30 and October 31, 2009, the landlord's understanding was that the tenant planned to vacate the unit. In view of this understanding, the landlord repaid the tenant's security deposit in the total amount of \$375.00 by way of cheque dated November 3, 2009 for \$350.00, in addition to \$25.00 in cash.

### **Analysis**

Based on the documentary evidence and undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated November 2, 2009. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

### **Conclusion**

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: December 21, 2009

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Dispute Resolution Officer