

## **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 the tenant's door on November 2, 2009. The landlord also sought a Monetary Order for the 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.

### **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 the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on September 1, 2008. Rent is \$1,250 per month, due on the first, and the landlord holds a security deposit of \$625 paid on August 8, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served after the tenant had failed to pay rent for November 2009. In the interim, the November rent remains unpaid and the December rent has not been paid.

As a matter of note, the tenant wrote to the landlord on December 1, 2009 giving her notice to end the tenancy on December 31, 2009, acknowledging her indebtedness and proposing a repayment schedule. The tenant advised that she had found new accommodation at a much lower rent and expressed her intention to pay off her rent arrears by February 2010.

I must note that the letter and the tenant's conduct at the hearing constituted as responsible an approach as one could take under the circumstances and reflected consideration of the landlord and the dispute resolution process.

## **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.

In this instance, I find that the tenant has not made application to dispute the Notice to End, the November rent was not paid within five days of receipt of the notice and the rent was not paid for December. Therefore, the landlord requested, and I find she is entitled to, an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the November and December rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

November rent	\$1,250.00
December rent	1,250.00
Filing fee	<u>50.00</u>
Sub total	\$2,550.00
Less retained security deposit	- 625.00
Interest due	- 3.74
<b>TOTAL</b>	<b>\$1,921.26</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and, in addition to authorization to retain the security deposit in set off, a Monetary Order for \$1,921.26 for service on the tenant.

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