

## **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 dated November 6, 2009. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the landlord confirmed that the tenant is no longer resident in the rental unit and withdrew the request for an Order of Possession.

In addition, I exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to request authorization to retain the security deposit in set off against the balance owed.

As a preliminary matter, the landlord had named the daughter of the tenant as a second respondent on the application. The tenant's daughter is not a party to the rental agreement, was not resident in the subject rental unit, and is not liable in this matter.

As her mother is currently hospitalized and does not have capacity to act on her own behalf, her daughter offered to act as her agent and to accept correspondence on

behalf of her mother. Therefore, I have amended the application to remove the name of the daughter as a respondent.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and recovery of the filing fee, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on May 1, 2003 and ended on or about November 4, 2009. Rent was \$825 per month and the landlord holds a security deposit of \$360 paid on or about May 1, 2003.

During the hearing, the landlord gave evidence that the tenant's daughter had given notice in the last week of October that her mother would have to give up the tenancy due to her illness, and that her daughter had stopped payment on the November rent cheque.

The tenant's daughter stated that she had to do so because her mother's account was overdrawn and her mother had been hospitalized with a severe mental illness. She said she had attempted to arrive at a payment schedule with the landlord and had offered cooperation to attempt to find a new tenant.

The tenant's daughter said that she anticipated being granted Power of Attorney over her mother's affairs but had not yet been so appointed.

The landlord stated that she had been unable to find a new tenant for November.

## Analysis

I find that the tenant is responsible for the November rent. I accept the agent's evidence that she attempted to find a resolution to avoid the necessity of a hearing. For that reason, I find that the filing fee should be split equally between the parties.

I find that the landlord is entitled to a Monetary Order for the unpaid rent and half the filing fee and authorization to retain the security deposit in set off as follows:

November rent	\$825.00
One-half of the filing fee	<u>25.00</u>
Sub total	\$850.00
Less retained security deposit (no interest due)	- 360.00
Less interest (May 1, 2003 to date)	- 12.75
<b>TOTAL</b>	<b>\$477.25</b>

## Conclusion

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary for \$477.25, enforceable through the Provincial Court of British Columbia, for service on the tenant.