

DECISION

Dispute Codes: OPR, MNR, MNDC 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 by posting on the tenant's door on November 25, 2009. The landlord also sought a Monetary Order for the unpaid rent and loss of rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing served by registered mail sent on December 7, 2009 and also served by posting, 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 a Monetary Order for the unpaid rent, loss of rent and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on or about April 1, 2007. Rent is \$400 per month and the landlord holds a security deposit of \$200 paid on or about April 1, 2007.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay rent from February 2009 to the present. He stated that the landlord had not acted sooner as his wife had passed away early in the year and he had been preoccupied by more pressing concerns. He said he has seen the tenant about the rental unit since the end of tenancy date set by the notice.

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 December 5, 2009.

In this instance, I find that the tenant has not made application to dispute the Notice to End, the rent arrears 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 he 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 unpaid 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:

Rent from February 2009 to December 2009 (11 mos. x \$400 = \$4,400)	\$4,400.00
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Filing fee	50.00
Sub total	\$4,450.00
Less retained security deposit	- 200.00
Less interest (April 1, 2007 to date)	- 5.30
TOTAL	\$4,244.70

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 a Monetary Order for \$4,244.70 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