

## **Decision**

**Dispute Codes:** OPR / OPB, MNR, FF

### **Introduction**

This hearing dealt with an application from the landlord for an order of possession, a monetary order as compensation for unpaid rent, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act

### **Background and Evidence**

There is no written residential tenancy agreement in place for this month-to-month tenancy which began in this particular unit in August 2009. While rent in a previous unit involving these same parties was \$500.00 per month, the landlord testified that when the tenant moved into this unit, he informed the tenant that rent was \$525.00 per month. Nevertheless, the landlord has accepted \$500.00 per month for rent in this unit since the tenancy began. Neither a security deposit nor a pet damage deposit were collected.

Arising from rent which was unpaid when due on December 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated December 2, 2009. The notice was served by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant has made no payment towards rent and he continues to reside in the unit.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated December 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.

I find that rent for a previous unit involving these same parties was \$500.00 per month. I also find that the landlord has continued to accept \$500.00 as the monthly rent for the unit which is the subject of this dispute during the period from August to November 2009. During that time there is no evidence that the landlord undertook to end the tenancy on the basis that full rent was not being paid. While the landlord testified he informed the tenant that monthly rent in the subject unit was \$525.00, in the absence of any conclusive documentary evidence to support that claim, for the purposes of this application I find that monthly rent is \$500.00.

As for the monetary order, I find that the landlord has established a claim of \$1,050.00. This is comprised of \$500.00 in unpaid rent for December 2009, \$500.00 in unpaid rent for January 2010, in addition to recovery of the \$50.00 filing fee. I therefore grant the landlord a monetary order under section 67 of the Act for \$1,050.00.

### **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.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,050.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 6, 2010

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Dispute Resolution Officer

