

## **Decision**

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

### **Introduction**

This hearing dealt with an application from the landlord for an order of possession, a monetary order for unpaid rent and utilities, 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**

Pursuant to a written residential tenancy agreement, what is now a month-to-month tenancy began on March 26, 2003. Currently, rent in the amount of \$1,735.00 is payable in advance on the first day of each month. A security deposit of \$800.00 was collected on March 26, 2003, and a pet damage deposit of \$500.00 was collected on March 26, 2003.

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 11, 2009. A copy of the notice was submitted into evidence. Following this, the parties agree that outstanding rent for November 2009 was paid on December 4, 2009. Presently, while no payment for utilities is outstanding, all rent is overdue for each of December 2009 and January 2010 in the total amount of \$3,470.00 (2 x \$1,735.00).

During the hearing the parties described the agreement reached between them subsequent to the filing of this application. In summary, the landlord wishes to proceed with his application for an order of possession and a monetary order, however, neither will be served on the tenant in the event that the tenant is able to pay all of the rent which is currently outstanding within the next few days.

## **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 November 11, 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. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$3,520.00. This is comprised of \$3,470.00 in unpaid rent combined for December 2009 and January 2010 (2 x \$1,735.00) in addition to the \$50.00 filing fee.

I order that the landlord retain the security deposit of \$800.00 plus interest of \$28.32, and the pet damage deposit of \$500.00 plus interest of \$17.71 (total: \$1,346.03), and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,173.97 (\$3,520.00 - \$1,346.03)

## **Conclusion**

Pursuant to 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 **\$2,173.97**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 7, 2010

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Dispute Resolution Officer