

## **Decision**

**Dispute Codes:** CNR, MNDC, OPT, AAT, FF

### **Introduction**

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, return of the security deposit, an order of possession, an order allowing access to / from the unit for the tenant or the tenant's guests, and recovery of the filing fee. Both parties participated and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

There is no written tenancy agreement for this month-to-month tenancy which began on October 1, 2009. Rent of \$900.00 is payable in advance on the first day of each month, and a security deposit of \$450.00 was collected at the outset of tenancy.

The landlord testified that the tenant paid all rent due for October 2009, but that rent paid for November 2009 was limited to \$850.00, which is \$50.00 less than the amount due. Subsequently, the tenant paid no rent for December 2009 or January 2010.

Arising from the tenant's failure to pay all rent due, as above, the landlord issued a 10 day notice to end tenancy for unpaid rent. The notice was served in person on the tenant. The parties agree that the notice was served on or about January 3, 2010. Subsequently, the tenant has made no payment towards rent and continues to reside in the unit. The landlord made an oral request during the hearing for an order of possession effective February 28, 2010.

### **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 on or about January 3, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and her application to dispute the notice was filed on January 14, 2010, which is outside the 5 day limit permitted. 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.

In the meantime, the parties undertook to try to resolve matters between them related to i) unpaid rent, ii) compensation in favour of the tenant for alleged deficiencies in the unit, and iii) the disposition of the security deposit. Pending the outcome of their discussion, the tenant presently withdrew her application for compensation. Other aspects of the tenant's application are hereby dismissed.

Both parties have the option to file an application for dispute resolution in the event they are unable to resolve the above matters.

### **Conclusion**

Pursuant to the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Sunday, February 28, 2010**. 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.

DATE: February 24, 2010

---

Dispute Resolution Officer