

## **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 served by registered mail sent on December 7, 2009. The landlord also sought a Monetary Order for unpaid 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 by posting on the tenant's door, on January 5, 2010, 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 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 October 1, 2008. Rent is \$934 per month and the landlord holds a security deposit of \$934 paid on or about October 1, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant owed \$890 on the December rent. In the interim, the tenant has not paid rent for January or February of 2010.

### **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. That end date was December 22, 2009 when the five days for deemed service of the registered mail is taken into account. .

In this instance, I find that the tenant has not made application to dispute the Notice to End and the rent arrears was not paid within five days of receipt of the notice.

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 and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

December 2009 rent shortfall	\$ 890.00
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January 2010 rent	934.00
February 2010 rent	934.00
Filing fee	<u>50.00</u>
Sub total	\$2,808.00
Less retained security deposit	- 934.00
Less interest (October 1, 2008 to date)	- 3.52
<b>TOTAL</b>	<b>\$1,870.48</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary for \$1,870.48, enforceable through the Provincial Court of British Columbia, for service on the tenant.

February 11, 2010