

## **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 in person on December 23, 2009. The landlord also sought a Monetary Order for the unpaid rent/ 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 in person on January 27, 2010, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

This matter was originally dealt with as a Direct Request Proceeding on January 18, 2010 on written submissions only, but was adjourned to the present participatory hearing for want of clarification of the rental agreement.

As a preliminary matter, the application was originally brought under the *Manufactured Home Park Tenancy Act*, but as the park owns the manufactured home, the tenancy falls under the *Residential Tenancy Act*. I have exercised the discretion granted under section 64(3)(c) and amended the application accordingly.

## **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 and filing fee, and authorization to retain the security deposit in set off.

## **Background and Evidence**

This tenancy began on August 20, 2009. Rent is \$650 per month due on the last day of the month and the landlord holds a security deposit of \$325 paid on August 12, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for December 2009. She amended her application on January 20, 2010 when the tenant had not paid the rent for January. In the interim, the tenant has not given notice or paid rent for February or March 2010.

## **Analysis**

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it. Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy which was January 2, 2010.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance, the tenant owes the landlord an amount calculated as follows:

Rent for December 2009	\$ 650.00
Rent for January 2010	650.00
Rent for February 2010	650.00
Rent for March 2010	650.00
Filing fee	50.00
Sub total	\$2,650.00
Less retained security deposit (No interest due)	- 325.00
<b>TOTAL</b>	<b>\$2,325.00</b>

## Conclusion

The landlord's copy of this decision is accompanied by a Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect 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 Order for \$2,325.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 3, 2010