

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord said she served the Tenant in person on January 23, 2010 with a copy of the Application and Notice of Hearing. Based on the evidence of the Landlord, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

### Background and Evidence

This month to month tenancy started on January 1, 2009. Rent is \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month.

The Landlord claims that the Tenant did not pay rent for January 2010 when it was due and as a result, on January 6, 2010 the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2010. The Landlord said that the Tenant made a payment of \$880.00 on February 9, 2010 for which he was given a receipt stating that the payment was accepted for use and occupancy only (or in other words that the Landlord did not intend to reinstate the tenancy).

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 11, 2010. I find that the Tenant has not paid the overdue rent in full and has not applied for dispute resolution. Consequently, I find

pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears for January 2010 in the amount of \$319.13 as well as the \$50.00 filing fee for this proceeding. The Landlord will have to make a separate application to recover unpaid rent and utilities for February and March 2010.

### Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$369.13** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 09, 2010.

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Dispute Resolution Officer