

## **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 posting on the tenant's door on February 10, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) to permit the landlord's application to be amended to request authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on February 24, 2010, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, the hearing proceeded in her 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 the unpaid rent and filing fee, and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on November 1, 2009. Rent is \$895 per month and the landlord holds a security deposit of \$447.50 paid on October 16, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the rent for January and February, 2010 and the landlord had previously served another Notice to End Tenancy on January 7, 2010. Despite the notices, the January and February rents remained unpaid and in the interim, the tenant paid no rent for March and only \$400 of the rent due for April.

## **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 second Notice to End Tenancy which was corrected to February 23, 2010 after taking into account the three day deemed service for notice served by posting under section 90 of the *Act*. .

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:

January 2010 rent	\$895.00
February 2010 rent	895.00
March 2010 rent	895.00
April rent shortfall (\$895 - \$400 payment)	495.00
Filing fee	50.00
Sub total	\$3,230.00
Less retained security deposit (No interest due)	- 447.50
<b>TOTAL</b>	<b>\$2,782.50</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession 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 \$2,782.50, enforceable through the Provincial Court of British Columbia, for service on the tenant.

April 9, 2010