

## **DECISION**

**Dispute Codes:** OPR, OPC, MNR, 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 and utilities served in person on April 14, 2010, and a second notice for cause, repeated late payment of rent, served on April 27, 2010. The landlord also sought a Monetary Order for the unpaid rent and utilities and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing in person on May 5, 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.

### **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 utilities, loss of rent, and recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on November 1, 2009 under a fixed term rental agreement set to end on October 31, 2011. Under the rental agreement, rent was \$1,280 per month and the tenants agreed to pay \$130 per month in utilities, a total of \$1,410. The tenant agrees to pay a security deposit of \$640 but that cheque was returned NSF and was never replaced.

During the hearing, the landlord gave evidence that the Notice to End Tenancy for unpaid rent was served on April 14, 2010 when the tenant had not paid the utilities for February, had a rent shortfall from March 2010 of \$280, and had not paid rent for April.

In the interim, the tenant did not pay rent or utilities for May, and although partially moved out, left a substantial number of items, including two derelict cars, on the property in June. The landlord had checked the property a number of times in June and there was no sign of the tenant.

He stated that the tenant had left no forwarding address, had not returned the keys to the rental unit, and had left the door unlocked.

## **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)

the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

Similarly, the tenant did not make application to dispute the Notice of End Tenancy for cause, repeated late payment of rent, and is similarly presumed to have accepted that the tenancy ended on May 31, 2010 under section 47(5) of the *Act*.

In addition, by failure to give notice or return the keys, and by leaving behind belongings still not retrieved at the time of the hearing, I find that the tenant was overholding and responsible the landlord's rent/loss of rent for June 2010.

Accordingly, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. on June 23, 2010.

I further find that, including recovery of the filing fee for this proceeding, the tenant owes the landlord an amount calculated as follows:

February utilities	\$130.00
March rent shortfall	280.00
April rent and utilities	1,410.00
May rent and utilities	1,410.00
June rent/loss if rent and utilities	1,410.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$4,690.00</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on June 23, 2010.

The landlord is also issued with a Monetary Order for \$4,690.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

May 20, 2010