

## **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 served by registered mail sent on June 5, 2010. The landlord also sought a Monetary Order for the unpaid rent, 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 sent by registered mail on June 23, 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 the unpaid rent and filing fee and authorization to retain the security deposit in set off.

### **Background and Evidence**



This tenancy began on September 1, 2008. Rent is \$2,000 per month and the landlord holds a security deposit of \$1,000 paid on or about September 1, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had an accumulated rent arrears of \$6,000.02. He stated that the tenant made one payment of \$2,000 by money order received June 14, 2010 which the landlord acknowledged by letter of June 14, 2010 advising the tenant that the payment was accepted for “use and occupancy only” and did not renew the tenancy.

While the June 14, 2010 payment reduced the outstanding balance to \$4,000.02, the landlord stated that, in the interim, the tenant did not pay rent for July or August 2010.

Therefore, the landlord requests an Order of Possession and a Monetary Order for the unpaid rent.

### **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 all of the outstanding 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, June 19, 2010.

Therefore, 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 unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, the tenant owes to the landlord an amount calculated as follows:

Outstanding balance to June 30, 2010	\$4,000.02
Rent for July 2010	2,000.00
Rent for August 2010	<u>2,000.00</u>
Sub total	\$8,000.02
Less retained security deposit	- 1,000.00
Less interest (September 1, 2008 to date)	- <u>5.00</u>
<b>TOTAL\$</b>	<b>\$5,995.02</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 two days from service of it on the tenant.

The landlord is also issued with a Monetary Order for \$5,995.02, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 12, 2010

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