

## **DECISION**

### **Dispute Codes:**

**Landlord:** OPR, MNR, and FF

### **Introduction**

This application was brought by the landlord on September 16, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated and served in person on September 16, 2010. The landlord also seeks a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing served in person on September 18, 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 the absence of the tenant.

### **Issues to be Decided**

This application requires decisions on whether the landlord is entitled to an Order of Possession and to a Monetary Order for unpaid rent and filing fee.

### **Background and Evidence**

This tenancy began on May 1, 2003 and pad rent is \$347.75 per month.

During the hearing, the landlords gave evidence that the Notice to End Tenancy had been served when the tenant's rent cheques for August and September of 2010 had been returned as NSF. They stated that the rent for October had been paid and that they had issued a receipt the notation, "for use and occupancy only," indicating that acceptance of the October rent did not reinstate the tenancy.

The landlords stated that they had attempted to arrange a catch-up repayment schedule with the tenant but that she had not responded to them.

Therefore, the landlords now seek a Monetary Order for the rent and NSF fees for each of the two months and an Order of Possession to have the manufactured home removed from the park by 1 p.m. on November 30, 2010.

## **Analysis**

Section 39 of the *Act* states that if rent is not paid, a landlord may issue a 10-day Notice to End Tenancy on any day after the rent is due. The tenant may nullify the notice by paying the overdue rent within five days of receipt of the Notice. In this instance, I find that the rent remained unpaid to the time of the hearing.

Section 39(5) of the *Act* states that if a tenant does not pay the overdue rent or make application to contest the Notice to End Tenancy, the tenant is conclusively presumed to have accepted that the tenancy ends on the date stated on the notice, September 24, 2010 in this case.

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect on November 30, 2010 as requested.

I further find that, including unpaid rent, NSF fees and recovery of the filing fee to which I find the landlords are entitled, the tenant owes to the landlords an amount calculated as follows:

Pad rent for August 2010	\$347.75
NSF fee for August 2010	25.00
Pad rent for September 2010	347.75
NSF fee for September 2010	25.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$795.50</b>

## Conclusion

The landlords' copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on November 30, 2010;
2. A Monetary Order for \$795.50, enforceable through the Provincial Court of British Columbia, for service on the tenant.

October 21, 2010