

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

This application was brought by the landlord on November 25, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 15, 2010 in person. The landlord also sought a Monetary Order for the unpaid rent/loss of rent and recovery of the filing fee for this proceeding. In addition, as authorized under section 64(3)(c) of the Act, I have amended the landlord's application to include a request for 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 November 25, 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/loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

## **Background and Evidence**

This tenancy began on November 15, 2010. Rent is \$745 per month as of December 2010 having been increased from \$725 by a Notice of Rent Increase dated August 12, 2010. The landlord holds a security deposit of \$350 paid on November 7, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 15, 2010 had been served when the tenant had failed to pay rent for September, October and November of 2010.

At the time of the hearing, the tenant remained in the rental unit and had not paid rent for December 2010.

## **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due. 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 make application to dispute the notice and I accept the evidence of the landlord that he did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was 10 days after service, November 25, 2010.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that , including rent, loss of rent, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off, the tenant owes the landlord an amount calculated as follows:

Rent, for September 2010	\$725.00
Rent for October 2010	725.00
Rent for November 2010	725.00
Rent/loss of rent for December 2010	745.00
Filing fee	<u>50.00</u>
Sub total	\$2,970.00
Less retained security deposit	- 350.00
Less interest (November 7, 2008 to date)	- .79
<b>TOTAL</b>	<b>\$2,619.21</b>

## Conclusion

The landlords' 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.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,619.21**, enforceable through the Provincial Court of British Columbia, for service on the tenant..

December 14, 2010