

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The landlord participated in the face to face call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing documents. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This fixed term tenancy agreement started July 15, 2010 with monthly rent of \$1800.00, the tenant paid a security deposit of \$900.00 On February 9, 2011 the landlord and new owner of the property served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

This property was sold to the current owner and title transferred December 30, 2010. The seller provided the purchaser/landlord with a cheque for \$1567.74 that was to cover the January 2011 rent. The tenant put a stop payment on the January 2011 rent cheque on the basis that she had been served a 2 Month Notice for Landlord's Use of Property by the new landlord. The landlord has submitted into evidence, a sworn affidavit stating that she did not serve the tenant with a 2 Month Notice for Landlord's Use of Property.

To date the February 2011 rent has not been paid by the tenant and the tenant purports that the seller holds a post dated cheque for the February rent. Both the January and February 2011 rent remains unpaid.

The landlord's agent testified that that the tenant, unbeknownst to the former owner, had sublet the rental unit. The tenant accepted a security deposit and was accepting monthly rent from the sublet tenant but not providing the rent payments to the landlord. The landlord's agent stated that the tenant has never resided in the residence.

The landlord in this application is seeking an order of possession for unpaid rent and a monetary order for January and February 2011 rent in the amount of \$3600.00.

### Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a 10 day notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

I find that the landlord has established a claim for \$3600.00 in unpaid rent.

The landlord is entitled to recovery of the \$100.00 filing fee.

### Conclusion

I hereby grant the Landlord an **Order of Possession**, effective **2 days** after service of the Order upon the Tenants. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$3600.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$900.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2800.00** (\$3600.00+\$100.00=\$3700.00-\$900.00=\$2800.00)

A monetary order in the amount of **\$2800.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 25, 2011

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Residential Tenancy Branch