

## **DECISION**

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

### **Introduction**

This application was brought by the landlord on December 30, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated and served on December 17, 2010 by posting on the tenant's door. The landlord also sought a Monetary Order for the unpaid rent for December 2010 and January 2011, NSF fees for both months and recovery of the filing fee for this proceeding.

Despite having been served with the Notice to End Tenancy sent by registered mail on December 30, 2010, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing.

As a matter of note, the landlord advised that Canada Post's tracking service noted that the registered mail had been picked up by the Provincial Government which would be consistent with his understanding that the tenant's affairs are currently being seen to by the Office of the Public Guardian and Trustee of British Columbia.

### **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 NSF fees and 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 manufactured home park tenancy began on February 24, 1998 and rent is currently \$350 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 17, 2010 had been served when the December rent remained unpaid after

service of an in-house notice had been served for the same matter on December 9, 2010.

The landlord stated that when he had not seen the tenant for several days, he called her son who advised that the tenant had been hospitalized. He was unable to state where she was but that she was not expected to return home.

The landlord stated that he had received a cheque from the Public Guardian dated January 6, 2011 in the amount of \$355 but that the balance remained unpaid. He stated that he had not otherwise heard from the tenant or a representative.

### **Analysis**

Section 20 of the *Act* provides that tenants must pay rent when it is due. Section 39 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 they did not pay the full rent within five days of receiving the notice.

Therefore, under section 39(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 December 30, 2010 taking into account the three days deemed time for notice served by posting..

Thus, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. January 31, 2011.

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

Rent for December 2010	\$ 350.00
Rent for January 2011	350.00

NSF fees for December 2010 and January 2011 @ \$30 per	60.00
Filing fee	<u>50.00</u>
Sub total	\$810.00
Less \$355 paid by Public Guardian by cheque of January 6, 2011	- 355.00
<b>TOTAL</b>	<b>\$ 455.00</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 January 31, 2011.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order for **\$455.44**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 14, 2011