

## **DECISION**

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

### **Introduction**

This application was brought by the landlord on February 22, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on February 8, 2011 by posting on the tenant's door. The landlord also sought a Monetary Order for the unpaid rent and 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 February 22, 2011, 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, 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 September 1, 2007. Rent is \$795 per month starting February 1, 2011 having been increased from \$779.63 and the landlord holds a security deposit of \$362.50 paid on or about September 1, 2007.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of February 8, 2011 had been served when the tenant had failed to pay rent for October 2010, paid only \$500 for each of November and December 2010, and had paid none of the rent due for February. The landlord stated that the tenant had made two payments of \$400 in January 2011 leaving a surplus for the month of \$20.37.

The landlord stated that, at the time of the hearing, the tenant remained in the rental unit and that he had not paid the rent for March 2011. Therefore, the landlord requested the Order of Possession and a Monetary Order for outstanding rent and filing fee.

## Analysis

Section 26 of the *Act* provides that a tenant 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 February 21, 2011 taking into account the three days deemed service for Notice served by posting..

Accordingly, 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 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 October 2010	\$ 779.63
Rent shortfall for November 2010	279.63
Rent shortfall for December 2010	279.63
Rent over payment for January 2011	(20.37)
Rent for February 2011	795.00
Rent for January 2011	795.00

Filing fee	50.00
Sub total	\$2,958.52
Less retained security deposit (no interest due)	- 362.50
Interest (September 1, 2007 to date)	- 7.28
<b>TOTAL</b>	<b>\$2,588.74</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.

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,588.743.74**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 7, 2011