

## **DECISION**

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

### **Introduction**

This application was brought by the landlord on May 10, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on May 4, 2011. The landlord also sought a Monetary Order for the unpaid rent, loss of 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 served in person on May 10, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 and filling fee for this proceeding, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on November 10, 2010. Rent is \$1,000 per month and the landlord olds a security deposit of \$500 paid on October 23, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant's rent due on May 1, 2011 was short by \$390.

At the time of the hearing on June 3, 2011, the May rent shortfall remained unpaid, the tenant had not paid rent for June 2011 and remained in the rental unit.

Therefore, the landlord seeks an Order of Possession and a Monetary Order for the May rent shortfall and the rent and loss of rent for June 2011.

## 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 before me that the rent was not paid within five days of receipt of 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 May 14, 2011.

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

I find that the landlord is entitled to a Monetary Order for the unpaid rent and, given that the tenant is overholding and has not vacated in time for the landlord to get new tenants in June 2011, the order should also include loss of rent for the balance of June 2011.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and authorization to retain the security deposit in set off. The Monetary Order is calculated as follows:

Rent shortfall for May 2011	\$ 390.00
Rent/loss of rent for June 2011	1,000.00

Filing fee	50.00
Sub total	\$1,440.00
Less retained security deposit (No interest due)	- 500.00
<b>TOTAL</b>	<b>\$ 940.00</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 two days from service of it on the tenants.

In addition to authorization to retain the tenant's security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$940.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 3, 2010