

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### **Introduction**

This an application filed by the Landlord for an order of possession and a monetary order for unpaid rent as a result of a 10 day notice to end tenancy for unpaid rent and recovery of the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend. The Landlord states that the Tenant was served with the notice of hearing and evidence document in person at the rental unit on March 30, 2012. The Landlord states that his wife, J.S. was a witness to the service. The Landlord's wife, J.S. gave direct testimony that she was present when her husband handed the notice of hearing document package to the Tenant at the rental unit door on March 30, 2012 in the evening. As such, I find based upon the undisputed testimony that the Tenant has been properly served under the Act with the notice of hearing and evidence package in person and is deemed served the same day.

### **Issue(s) to be Decided**

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

### **Background and Evidence**

The Landlord states that there is a Tenancy Agreement, but has not submitted one. The Landlord states that the monthly rent is \$1,800.00 payable on the 1<sup>st</sup> of each month.

The Landlord states that on February 9, 2012 a 10 day notice to end tenancy was served on the Tenant in person on the same day. The notice displays an effective date of February 19, 2012 and that rent of \$1,800.00 was due on February 1, 2012. The Landlord states that the rent has not been paid for February, March and April and is seeking the unpaid rent of \$1,800.00 per month. This total rent arrears is \$5,400.00. The Landlord states that he just spoke to the Tenant a couple of days before the hearing and that the Tenant is still in possession of the rental and has failed to pay any rent. The Landlord seeks an order of possession and monetary order for unpaid rent.

### Analysis

I accept the undisputed testimony of the Landlord that a 10 day notice to end tenancy for unpaid rent was personally served on February 9, 2012 on the Tenant. 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 accept that the tenancy ended on the effective date of the notice. Based upon the above facts, I find that the Landlord is entitled to an order of possession. As the effective date the notice has passed, the order of possession will be effective 2 days after it is served upon the Tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the Landlord has established a claim for \$5,400.00 in unpaid rent. However the Landlord's monetary claim is limited to the monetary application of \$5,000.00 based upon his application. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord an order under section 67 for the balance due of \$5,050.00. This order may be file in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted an order of possession and a monetary order for \$5,050.00.

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: April 18, 2012.

---

Residential Tenancy Branch