

## **DECISION**

**Dispute Codes:** MNDC, MNSD and FF

### **Introduction**

This application was brought by landlord seeking an Order of Possession pursuant to the tenant's notice to end tenancy, initially given on August 26, 2009 for September 30, 2009 and subsequently amended on September 29, 2009 to end October 30, 2009.

The landlord also sought a Monetary Order for unpaid rent for November 2009 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 delivered in person on November 6, 2009, the tenant (executrix) did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

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

This application requires a decision on whether the landlord is entitled to an Order of Possession, a Monetary Order for the unpaid rent and filing fee and authorization to retain the security deposit in set off.

## **Background and Evidence**

This tenancy began on February 1, 1988. Rent is \$739 per month and the landlord holds a security deposit of \$230 paid on January 22, 1998.

During the hearing, the landlord presented evidence that, by letter of August 26, 2009, the executrix of the estate advised that the tenant had passed away and gave notice to end the tenancy on September 30, 2009.

By letter of September 29, 2009, the executrix advised that the unit would not be available until October 30, 2009 and submitted payment for the October rent.

When the unit remained occupied on November 6, 2009, the landlord made application for the Order of Possession and a Monetary Order for the November rent which remained unpaid at the time of the hearing.

## **Analysis**

Residential Policy Guideline 11 provides that, "A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy."

Therefore, I find that, in the absence of the landlord's consent, the tenant is bound by the Notice to End Tenancy as amended on September 29, 2009 and that the tenancy ended on October 30, 2000.

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

I further find that the landlord is entitled to a Monetary Order for the November rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent for November 2009	\$739.00
Filing fee	<u>50.00</u>
Sub total	\$789.00
Less retained security deposit	- 230.00
Less interest (January 22, 1988 to date)	- <u>167.73</u>
<b>TOTAL</b>	<b>\$391.27</b>

## **Conclusion**

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant

Also, In addition to the authorization to retain the security deposit and interest in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$391.27 for service on the tenant.