

## **DECISION**

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

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid served by posting on the tenant's door on March 3, 2010. 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, 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.

This matter was originally dealt with as a Direct Request Proceeding on April 12, 2010 on written submissions only but was adjourned to the present participatory hearing due to a defect in the declaration of service of the Notice to End Tenancy.

### **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 filing fee, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on November 1, 2009. Rent is \$825 per month and the landlord holds a security deposit of \$412.50 paid on October 23, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for March 2010. In the interim, the tenant also failed to pay the rent for April 2010. She stated that the tenant has not given notice, and it is uncertain whether she remains in the rental unit.

Therefore, the landlord requests an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit.

## **Analysis**

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 pay the rent within five days of receiving the notice and did not make application to dispute it. Therefore, under the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

Therefore, I find that the landlord is entitled to an Order of Possession effective 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 against the balance owed, the tenant owes the landlord an amount calculated as follows:

Rent for March 2010	\$ 825.00
Rent for April 2010	825.00
Filing fees	<u>50.00</u>
Sub total	\$1,700.00
Less retained security deposit (No interest due)	- 412.50
<b>TOTAL</b>	<b>\$1,287.50</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 security deposit in set off, the landlord is also issued with a Monetary Order for \$1,287.50, enforceable through the Provincial Court of British Columbia, for service on the tenant.

May 27, 2010