

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

On November 14, 2008, the landlord collected a security deposit from the tenant in the amount of \$450.00. The tenancy began on December 1. Rent in the amount of \$900.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of January and on January 2, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of February.

Based on the landlord's testimony, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. 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.

The landlord said that the tenant paid \$500.00 cash on January 18 and \$375.00 by check towards the January rent. He is therefore seeking to recover from the tenant outstanding rent for the month of January in the amount of \$25.00. The tenant is currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income for the month of February in the amount of \$900.00. I find that the tenant should reasonably have known that the landlord

could not re-rent the unit while he was still in residence and I allow the claim for a further \$900.00.

The landlord is also claiming \$25.00 late fee for the late payment of rent for January. I note that Clause 0 in the tenancy agreement does stipulate the applicability of such a fee. I therefore allow a claim for \$25.00 as late fee for January.

Based on the above, I find that the landlord has established a claim for \$25.00 in unpaid rent, \$900.00 in loss of income and \$25.00 late fee. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$450.89 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$549.11. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 13, 2009.