

## **DECISION**

**Dispute Codes:** MNR, MNSD, OPR, 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. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on January 21, 2009, the tenant did not participate in the conference call hearing.

On November 26, 2005, the landlord collected a security deposit from the tenant in the amount of \$337.50. The tenancy began on December 1, 2005. Rent in the amount of \$738.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the months of December and January of 2009 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 is seeking to recover from the tenant outstanding rent of \$40.00 for December and \$738.00 for January. 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 \$738.00. 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 \$738.00. The landlord is also seeking to include a claim for loss of income for the month of March in the amount of \$738.00. She explained that in view of the date of this hearing, she will likely not receive the order of possession and serve it on the tenant in time for her to re-rent the unit for March 1. I have accepted the landlord's explanation. However, I find that there is a reasonable possibility that the landlord might be able to re-rent the unit for March 15. Therefore, I allow a claim of ½ month's rent in the amount \$369.00.

The landlord is also claiming for late rent payment charges of \$20.00 for each of the months of December, January, February and March. I note that Clause 3 of the tenancy agreement does stipulate the applicability of such charges. However, as the tenant's move out date is unknown at this time, I dismiss the landlord's claim for late rent payment charges for March. I allow a claim of \$60.00 as late rent payment charges.

Based on the above, I find that the landlord has established a claim for \$778.00 in unpaid rent, \$1107.00 in loss of income and \$60.00 in late rent payment charges. 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 \$349.44 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1645.56. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 26, 2009.