

DECISION

Dispute Codes: MNR, OPR, 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 October 2, 2008, the landlord collected a security deposit from the tenant in the amount of \$375.00. The tenancy began on October 3. Rent in the amount of \$750.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of February and on February 3, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant acknowledged receiving the notice to end tenancy on either February 3 or 4. The landlord said that on February 15, the tenant paid \$400.00 towards his February rent and on February 27, the tenant paid the \$375.00 towards the balance of the February rent and the \$25.00 late fees. The landlord also said that her acceptance of the February rent was on the sole basis of the tenant's "use and occupancy" of the unit.

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 within the prescribed time frame 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 tenant is currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income of \$250.00 for March and \$750.00

for April. 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 \$1000.00.

The landlord is also seeking recovery of \$25.00 late fees for the tenant's late payment of the April rent. I note that clause 7 of the tenancy agreement does provide for the applicability of such charges. Accordingly, I allow the landlord's claim for this amount.

As for the monetary order, I find that the landlord has established a claim for \$1000.00 in loss of income and \$25.00 in late fees. 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 \$376.40 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$698.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 15, 2009.