

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, FF

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

On December 11, 2008, the landlord collected a security deposit from the tenants in the amount of \$1500.00. The tenancy began on December 3, 2008. Rent in the amount of \$3000.00 is payable in advance on the first day of each month. The tenants failed to pay rent in the month of February, 2009 and on February 4, the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the months of March and April.

Based on the landlord's testimony, I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice and are 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 tenants must be served with the order of possession. Should the tenants 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 tenants outstanding rent for the month of February in the amount of \$500.00. The tenants maintained that they had paid this amount to the landlord. During the hearing, the female tenant became evasive and hesitant when asked whether she had paid the balance of \$500.00 for the February rent. On five occasions, she evaded the question and referred to the March and April rent instead. When I pointed out to her that she was being evasive, the tenant then answered, "in my heart, I believe I paid the balance of \$500.00 in March". The tenant again became evasive and hesitant

when asked when in March she had paid the \$500.00. Eventually, she answered that it was the first week of March but she did not know the exact date. When asked if she could provide proof of payment, the tenant said that she always paid the landlord in cash but she did not obtain a receipt. When asked if she could prove a withdrawal of \$500.00 from her bank in the alleged time frame, the tenant first exclaimed, "Oh God". Eventually, she said she was able to provide such proof. Based on the above, I do not find that the tenants have proven that they had paid the outstanding balance of \$500.00 for the February rent.

The tenants are currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income for the months of March and April in the amount of \$6000.00. I find that the tenants should reasonably have known that the landlord could not re-rent the unit while they were still in residence and I allow the claim for a further \$6000.00.

As for the monetary order, I find that the landlord has established a claim for \$500.00 in unpaid rent and \$6000.00 in loss of income. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$6550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.