

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, 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 in person on April 11, 2009, the tenants did not participate in the conference call hearing.

On July 22, 2008, the landlord collected a security deposit from the tenants in the amount of \$800.00. The tenancy began on August 1, 2008. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. The tenants failed to pay rent in the months of January, February, March and April and on April 11, 2009, 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 month of May.

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 of \$360.00 for January, \$414.00 for February, \$1600.00 for March and \$1600.00 for April. 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 month of May in the amount of \$1600.00. 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 \$1600.00.

The landlord is also seeking recovery of late payment charges as provided by clause 6 of the tenancy agreement. The landlord said that the tenants were late in paying rent for each of the months from September 2008 to April 2009. The landlord is therefore claiming \$25.00 for each of these months for a total of \$200.00. Based on the above, I find that the landlord is entitled to such recovery and I allow a claim for \$200.00 as late payment charges.

As for the monetary order, I find that the landlord has established a claim for \$3974.00 in unpaid rent, \$1600.00 in loss of income and \$200.00 in late 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 \$805.34 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5018.66. This order may be filed in the Small Claims Court and enforced as an order of that Court.