

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, CNR, FF

This hearing dealt with a cross applications. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied to cancel the notice to end tenancy.

On April 6, 2007, the landlord collected a security deposit from the tenant in the amount of \$650.00. The tenancy began on May 1, 2007. Rent in the amount of \$1300.00 is payable in advance on the first day of each month. The tenant failed to pay rent which included the utility charges in the month of March, 2009 and on April 5, the landlord served the tenant with a notice to end tenancy for non-payment of rent.

Based on testimony by both parties, 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. He explained that he withheld an amount of utility charges of \$123.13 because the heating system in the rental unit was faulty. Section 26 of the *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement. Based on the above, I dismiss the tenant's application to cancel the notice to end tenancy. During the hearing, the landlord requested an order of possession with an effective date of July 31, 2009. Based on the above facts, I find that the landlord is entitled such 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.

Both parties agreed that the April rent check was returned "N.S.F." and a total of \$444.72 in utility charges remains unpaid. The landlord is seeking to recover from the tenant \$1348.00 in outstanding rent and \$444.72 in utility charges. 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 May in the amount of \$1348.00. 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 \$1348.00.

As for the monetary order, I find that the landlord has established a claim for \$1348.00 in unpaid rent, \$1348.00 in loss of income and \$444.72 in utility 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 \$667.07 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2523.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.