

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, MNSD, ERP, LRE, FF and O

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of December 21, 2009, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on December 7, 2009 by placement in the tenants' mail box. The landlord also sought a Monetary Order for the unpaid rent, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

By application of November 19, 2009, the tenants seek a Monetary Order for work performed, an order for emergency repairs, and an order restricting the landlord's right to enter the rental unit.

At the commencement of the hearing, the tenant advised that they had vacated the rental unit on December 28, 2009. Thus, the tenants' request for emergency repairs and restricted landlord access and the landlord's request for an Order of Possession were rendered moot. In addition, a claim by the tenants for compensation for cleaning the downstairs was satisfied by a payment from the landlord.

In addition, while the tenant had named the rental unit's owner as respondent, application on behalf of the landlord was brought by the property management

company. I accept the evidence of the property managers that they remain the landlord's agent until February 1, 2010 and amended the tenant's application to name the property manager (hereinafter referred to as the landlord) as respondent.

In addition, I exercised my discretion under section 64(3)(c) of the *Act* to permit the landlord's application to be amended to request authorization to retain the security deposit in set off against any balance owed.

### **Issues to be Decided**

The issues remaining to be decided are the landlord's claim for unpaid rent for December, late fee for November, recovery of the filing fee for this proceeding, liquidated damages and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on July 1, 2009 under a fixed term rental agreement set to end on June 30, 2010. Rent was \$1,150 per month and the landlord holds a security deposit of \$575 paid on June 22, 2009.

During the hearing, the landlord gave evidence that the tenants had submitted a notice to end the tenancy in November and setting an end date of December 15, 2009, subsequently corrected to December 31, 2009.

The landlord gave uncontested evidence that the rent for December 2009 had not been paid. The tenant said that was partly due to confusion over whether rent should have been paid to the landlord or to the property manager.

The notice also included a cheque for the November rent dated November 9, 2009 and apologized for the late rent for which the landlord claims a \$25 late fee.

In addition, the landlord claims \$100 for liquidated damages due to the tenants leaving the fixed term tenancy early as specified in the rental agreement.

The only matters remaining on the tenants' application pertained to the downstairs suite, occupied by the tenants' son under a separate rental agreement which cannot be addressed in the present application.

## **Analysis**

As the tenants' application has been rendered moot, I find that the tenants remain responsible for their own filing fee.

I find that the landlord is entitled to a Monetary Order, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

December rent	\$1,150.00
November late fee	25.00
Liquidated damages	100.00
Filing fee	<u>50.00</u>
Sub total	\$1,325.00
Less security deposit (no interest due)	- <u>575.00</u>
<b>TOTAL</b>	<b>\$ 750.00</b>

## **Conclusion**

The landlord's copy of this decision is accompanied by a Monetary Order for \$750.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

During the hearing, the parties agreed to meet to conduct the move-out condition inspection report.

January 5, 2010