

## **DECISION**

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 by registered mail on January 22, the tenants did not participate in the conference call hearing.

### **Issues(s) to be Decided**

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

### **Background and Evidence**

The landlord's undisputed testimony is as follows. The tenancy began on or about December 1, 2008. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenants a security deposit in the amount of \$475.00. The tenants failed to pay rent in the month of January and on January 3 the landlord served the tenants with a notice to end tenancy. The tenants made a payment of \$1,000.00 on January 31 but paid no further monies toward rent in the month of February. The tenants appear to have vacated the rental unit on March 1 but as they left behind a number of items, the landlord is not certain. At the beginning of January the tenants had a credit of \$10.00 on their account. The landlord applied \$940.00 of the \$1,000.00 payment in January towards the rent for that month and \$20.00 toward the late payment fee for that month pursuant to the terms of the tenancy agreement. The remaining \$40.00 was applied toward rent for February. The landlord seeks a monetary order for \$910.00 in unpaid rent for February, \$950.00 in lost income for March and \$20.00 late payment fees for each of those months.

### **Analysis**

Based on the landlord's undisputed testimony, I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding

rent within 5 days of receiving the notice and did not apply 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.

As for the monetary order, I find that the landlord has established a claim for \$910.00 in loss of income for the month of February and I grant the landlord a further \$475.00 in loss of income for the first half of March. If the landlord is unable to re-rent the unit for the latter half of March, the landlord has liberty to reapply for that loss. The claim for late payment fees for February and March are dismissed as the tenancy ended in January pursuant to the notice to end tenancy and no rent was due for the months of February and March. The landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord has been awarded a total of \$1,435.00. I order that the landlord retain the \$475.00 deposit and the \$1.19 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$958.81. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: March 05, 2010

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