

## DECISION

Dispute Codes      OPR, MNR, (MNSD), FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlord's agent said she served the Tenants in person with the Application and Notice of Hearing on January 25, 2010. Based on the Landlord's evidence, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This month to month tenancy started on August 1, 2009. Rent is \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$600.00 on July 30, 2009.

The Landlord claims that the Tenants had arrears of rent for December, 2009 of \$200.00 and did not pay rent for January 2010 when it was due and as a result, on January 7, 2010 the Landlord served the Tenants by regular mail with a Notice to End Tenancy for Unpaid Rent and Utilities dated January 7, 2010. The Landlord said the Tenants also have rent arrears for February and March 2010. The Landlord claimed that the Tenants paid \$400.00 on January 22, 2010 and \$400.00 on February 26, 2010 for which they were issued receipts stating that the payments were for use and occupancy only.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 5 days after it was mailed, or on January 12, 2010. Consequently, the



Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than January 17, 2010.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears for December 2009 of \$200.00, for January 2010 of \$1,200.00, for February 2010 of \$1,200.00 and for March 1 – 8, 2010 (prorated) in the amount of in the amount of \$309.68 as well as a (prorated) loss of rental income for the period March 9 – 14, 2010 in the amount of \$232.26 and the \$50.00 filing fee for this proceeding. The Landlord may re-apply for a further loss of rental income.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears December 2009:	\$200.00
Rent arrears January 2010:	\$1,200.00
Rent arrears February 2010:	\$1,200.00
Rent arrears Mar. 1-8, 2010:	\$309.68
Loss of rental income:	\$232.26
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,191.94
Less: Security Deposit:	(\$600.00)
Accrued Interest:	(\$0.00)
Payment January 22/10:	(\$400.00)
Payment February 26/10:	<u>(\$400.00)</u>
BALANCE OWING:	\$1,791.94

### Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$1,791.94** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 08, 2010.

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Dispute Resolution Officer