

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

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

By application of February 16, 2010, the landlords sought an Order of Possession pursuant to a 10-day Notice to End Tenancy dated February 2, 2010 and corrected by a second notice dated February 10, 2010 for unpaid rent. The landlords also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits in set off against the balance owed.

By application of February 9, 2010, the tenants sought to have the Notice to End Tenancy set aside and a Monetary Order for damage or loss and recovery of the filing fee for this proceeding.

Despite having made application, and having been served with the Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, the tenants' application is dismissed without leave to reapply and the hearing on the landlords' application proceeded in their absence.

As a preliminary matter, though one of the landlords is named on the tenants' application, the other is not. The landlord had initially been represented by Vancouver Eviction Service, but, as the tenants had vacated and an Order of Possession was no longer required. I have exercised the discretion granted under section 64(3)(c) and amend the landlords' applicant remove the name of their agent and to end the name of the second landlord who is also named on the rental agreement.

### **Issues to be Decided**

This application requires a decision on whether the landlords are entitled to a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on December 15, 2009 and ended on or about February 27, 2010. Rent was \$1,200 per month and the landlords hold security and pet damage deposits of \$1,200.

During the hearing, the landlords gave evidence that the Notices to End Tenancy had been served when the tenants had failed to pay the rent for February 2010 and that the rent remained unpaid at the time of the hearing.

The landlords also gave evidence that, after indicating they would be leaving at the end of February, the tenants had advised them that they would not be moving before the present hearing.

However, the landlordw stated that the other tenant in the rental building called them at the end of February to advise that the subject tenants had vacated the rental unit and had left the front door wide open. On the basis of lack of notice, the landlords claim loss of rent for March 2010. New tenants have been found to move in for April 1, 2010. The subject tenants left no forwarding address.

## Analysis

Section 26(1) of the *Act* provides that, "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

Section 7 of the *Act* states that, if either party to a rental agreement suffers a loss due to the other's non-compliance with the legislation or rental agreement, the non-complying party must compensate the other for the loss.

Therefore, I find that the tenants owe the landlord \$1,200 for the February rent and \$1,200 for the loss of rent for March.

As authorized under section 72(2)(b) of the *Act*, I authorize and order that the landlords may retain the \$1,200 in deposits in set off against the balance owed.

Including recovery of the landlords' filing fee for this proceeding from the tenants, I find that the tenants owe the landlords an amount calculated as follows:

Rent for February 2010	\$1,200.00
Loss of rent for March 2010	1,200.00
Filing fee	<u>50.00</u>
Sub total	\$2,450.00
Less retained deposits (No interest due)	<u>- 1,200.00</u>
<b>TOTAL</b>	<b>\$1,250.00</b>

## **Conclusion**

In addition to authorization to retain the security and pet damage deposits in set off, the landlord is also issued with a Monetary Order for \$1,250.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 25, 2010