

## **DECISION**

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

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on February 3, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

This matter was originally dealt with as a Direct Request Proceeding on February 18, 2010 on written submissions only but was adjourned to the present participatory hearing due to the need for clarification of the rental agreement.

At the commencement of the hearing, the parties advised that the tenant had vacated the rental unit on or about March 1, 2010 and that the landlord no longer required an Order of Possession.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on December 1, 2009. Rent was \$750 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of February 3, 2010 had been served when the tenant had not paid the rent for January or February 2010. The landlord had also served a Notice to End Tenancy on January 2, 2010, but made application following the February notice.

The landlord gave uncontested evidence that the two months' rent remains outstanding.

### **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due unless they have a right under the *Act* to withhold a portion or all of it. Such a right may arise from the need for emergency repairs or an Order arising from a dispute resolution hearing, for example.

In this matter, there is no evidence that the tenants' failure to pay rent resulted from any right under the *Act*.

Therefore, I find that the landlord is entitled to a Monetary Order for all unpaid rent claimed, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed as follows:

Rent for January 2010	\$ 750.00
Rent for February 2010	750.00
Filing fee	<u>50.00</u>
Sub total	\$1,550.00
Less retained security deposit (no interest due)	- 325.00
<b>TOTAL</b>	<b>\$1,225.00</b>

## **Conclusion**

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$1,225.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

April 8, 2010