

## **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 January 18, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, mental suffering, and authorization to retain the security deposit in set off against the balance owed.

As noted during hearing, the landlord may not make claim for mental suffering resulting from the tenants' failure to pay rent.

Despite having been served with the Notice of Hearing served by registered mail sent on February 19, 2010, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and 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 1, 2009 under a 12-month fixed term rental agreement set to end on November 30, 2010. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid on November 24, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants had failed to pay rent for December 2009 and January 2010. In the interim, the tenants have paid no rent except for a payment of \$375 in March 2010.

## **Analysis**

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it. Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy which was January 28, 2010.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance, the tenants owe the landlord an amount calculated as follows:

December rent	\$1,200.00
January rent	1,200.00
February rent	1,200.00
March rent shortfall	825.00
April rent	1,200.00
Filing fee	<u>100.00</u>
Sub total	\$5,725.00
Less retained security deposit	- 600.00
Less interest (November 24, 2009 to date)	- <u>00.00</u>
<b>TOTAL</b>	<b>\$5,125.00</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$5,125.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

April 6, 2010