

## **DECISION**

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

### **Introduction**

These applications were brought by the landlords and the tenant.

By application of February 24, 2010, the landlords seek an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on February 15, 2010. The landlords also seek a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlords to amend their application to include a request for authorization to retain the security deposit in set off against the balance owed.

By application of February 22, 2010, the tenant seeks to have the Notice to End Tenancy set aside and a Monetary Order for recovery of electricity used by the landlords and compensation for various repairs.

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

At the commencement of the hearing, the landlord advised that the tenant had vacated the rental unit on April 11, 2010, the day before the hearing and had only given verbal notice shortly before.

### **Issues to be Decided**

The landlords' application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, filing fee and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on January 1, 2004 and ended when the tenant left without notice, without returning the keys, or providing a forwarding address on April 11, 2009. Rent was \$750 per month and the landlord holds a security deposit of \$350 paid on or about January 1, 2004.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay rent for December 2009 and January and February of 2010. In the interim, the tenant has also not paid rent for March or April of 2010.

Therefore, the landlords request a Monetary Order for the unpaid rent and filing fee and authorization to retain the security deposit in set off.

## 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 tenant 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 tenant did make application to dispute the notice, but she did not appear, did not pay the rent within five days of receiving the notice and moved out of the rental unit the day before the hearing. Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy which was February 25, 2010.

Accordingly, I find that the landlord is entitled to an Order of Possession, and even though the tenant has moved, the Order is provided to secure the landlords' right to possession of the unit.

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 tenant owes the landlord an amount calculated as follows:

December 2009 rent	\$ 750.00
January 2010 rent	750.00
February 2010 rent	750.00
March 2010 rent	750.00
April 2010 rent	750.00
Filing fee	50.00
Sub total	\$3,800.00
Less retained security deposit	- 350.00
Less interest	- 12.39
<b>TOTAL</b>	<b>\$3,437.61</b>

## **Conclusion**

The tenant's application is dismissed without leave to reapply.

The landlords are issued with an Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on April 14, 2010, to secure their right to possession of the rental unit.

The landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$3,437.61 for service on the tenant.

April 12, 2010