

## **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 on February 5, 2010. The landlord also sought a Monetary Order for unpaid rent and loss of rent, and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

At the commence of the hearing, the landlords gave evidence that the tenant had honoured the Notice to End Tenancy and had vacated the rental unit on February 15, 2010, although he had not given notice. Therefore, the request for an Order of Possession is moot and need not be addressed.

### **Issues to be Decided**

This application requires a decision on whether the landlords are entitled to a Monetary order for the unpaid rent/loss of 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, 2010 under a fixed term rental agreement set to end on May 31, 2010. Rent was \$1,100 per month and the landlords hold a security deposit of \$550 paid on December 1, 2007.

During the hearing, the parties gave evidence that the tenant had advised the landlords during their visit on January 30, 2010 that he would be late paying the rent for February 2010 due to unexpected medical expenses and car repairs. There was an apparent misunderstanding between the parties as to whether a larger portion of the rent would be paid immediately.

In any event, the tenant was served with the 10-day Notice to End Tenancy on February 5, 2010 and honoured the notice by vacating on February 15, 2010, the end date set by the notice.

The landlord's therefore claims rent for February 2010 and loss of rent for March 2010.

The landlord's gave evidence that as this was their third tenancy to meet an unfortunate conclusion and they had decided to list the property for sale. The property had, in fact, sold and the sale was to close April 15, 2010, the day following the hearing.

## **Analysis**

Section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to non-compliance of the other with the legislation or rental agreement, the non-compliant party must compensate the party suffering the loss.

Under that criteria, I find that there is no question that the tenant owes the landlords the rent for February 2010.

Under normal circumstances, as this was a fixed term rental agreement, the tenant would also owe the landlord for further losses of rent until the end of the fixed term agreement.

However, section 7(2) imposes a duty on a party making claim for a loss to do whatever is reasonable to minimize that loss. Normally, in matters of a broken lease, that would require a landlord to submit evidence of their efforts to find new tenants by way of advertising, signage, etc.

In this instance, as the landlords had decided to sell the rental unit, they did not advertise and were able to obtain a reasonably early sale.

In assessing a claim under these circumstances, I must ascertain:

1. If it is proven that the landlords have suffered a loss;
2. Whether the tenant was responsible for that loss;
3. The monetary value of that loss, and
4. The attempts by the landlords to minimize that loss.

I cannot be certain that the landlords suffered a loss. With the tenancy set to end on May 31, 2010 and with their having obtained a sale closing date before that time, it is as possible that the early end of the tenancy worked to their advantage as much as to their disadvantage. They were able to market the property at a prime time and to offer the advantage of immediate vacant possession. The value of the February rent may well have been recouped, or it may not, by the possibly fortuitous timing of events.

If there was a loss, there is no doubt that the tenant's breach contributed to it, but again, I cannot with any certain state that there was a loss.

I have no evidence that the landlords took action to attempt to minimize the loss of March rent because they chose to sell the rental unit rather than seek new tenants. That was their choice, and appears in retrospect to have been a good one. However, should the tenant be obliged to pay the March rent to insure the loss that may or may not have arisen from the landlords' decision to take leave of the rental business?

I find that the landlords' loss is unascertainable, even considering the landlords' advice that they still had to make a mortgage payment for March, and that the landlords did not act to minimize their loss as contemplated at section 7(b) of the *Act*. Therefore, I find that the tenant is responsible for the February rent but not for the loss of rent for March.

Thus, including recovery of the filing fee for this proceeding and authorization to retain the security deposit with interest in set off against the balance, I find that the tenant owes to the landlords an amount calculated as follows:

Rent for February 2010	\$1,100.00
Filing fee	50.00
Sub total	\$1,150.00
Less retained security deposit	- 550.00
Less interest (December 1, 2007 to date)	- 8.96
<b>TOTAL</b>	<b>\$ 591.04</b>

## **Conclusion**

In addition to authorization to retain the security deposit in set off, the landlords copy of this decision is accompanied by a Monetary Order for \$591.04, enforceable through the Provincial Court of British Columbia, for service on the tenant..

April 14, 2010