

## **DECISION**

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

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a one-month Notice to End Tenancy for Cause, repeated late payment of rent, served in person on January 23, 2010. The landlord also sought a Monetary Order for 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.

Despite having been served with the Notice of Hearing in person and sent by registered mail on March 4, 2010, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing.

### **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 November 1, 2008. Rent is \$1,250 per month and the landlord holds a security deposit of \$625 paid on November 1, 2008.

During the hearing, the landlord presented a copy of a letter to the tenants dated December 9, 2009 noting that the rent had been paid late four consecutive months and warning that the tenancy would be terminated if there were any further late payments.

The landlord also submitted a copy of the one-month Notice to End Tenancy dated January 9, 2010 and a letter dated January 21, 2010 confirming that the tenancy would end on February 28, 2010. In the interim, the tenants have not given notice, appear to remain in the rental unit, and have not paid rent for March or April of 2010.

## **Analysis**

Section 47(4) of the *Act* provides that tenants receiving notice to end the tenancy for cause may make application to dispute the notice within ten days of receiving it.

Section 47(5) of the *Act* states that if they do not make application, they are conclusively presumed to have accepted that the tenancy ends on the date set out in the notice and must vacate the rental unit by that date.

In this instance, I find that the tenants have not made application and appear to remain in the rental unit. Therefore, I find that the tenants are overholding and that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee and authorization to retain the security deposit in set off, calculated as follows:

March 2010 rent	\$1,250.00
April 2010 rent	1,250.00
Filing fee	<u>50.00</u>
Sub total	\$2,550.00
Less retained security deposit	- 625.00
Less interest (November 1, 2008 to date)	- <u>1.56</u>
<b>TOTAL</b>	<b>\$1,923.44</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 \$1,923.44, enforceable through the Provincial Court of British Columbia, for service on the tenants.

April 14, 2010