

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call on this date to deal with an application by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on March 26, 2010, the tenants did not participate in the conference call hearing.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The landlord's agent testified that the tenancy began on December 1, 2009. Rent in the amount of \$900.00 is payable in advance on the first day of each month in addition to a \$15.00 per month parking fee. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$422.50 however the landlord's agent testified that some of that deposit was returned to the tenants for reasons unknown.

The tenants failed to pay the full rent in the month of March, 2010, and on March 4, 2010 the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the months of April and May, 2010.

The landlord provided a tenant ledger in advance of the hearing, as well as a copy of the tenancy agreement. Both documents show a third tenant, who is not named but

also signed the tenancy agreement on November 30, 2009 and the tenant ledger shows that person also made some of the rent payments. When questioned about that name, the landlord's agent stated that anyone can pay the rent on behalf of the tenants. However, the ledger goes back to August 1, 2009, but no explanation for that was provided by the landlord's agent, and a fourth and possibly 5<sup>th</sup> tenant are named in that ledger. This may explain the return of the security deposit, but I have no evidence from the landlord's agent to assist with whom the reimbursements were paid to.

### **Analysis**

Based on the landlord's testimony I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As for the monetary order, I have carefully considered the evidence of the landlord's agent as well as the documents provided in advance of the hearing. I have separated the rental payments from the security deposit information from the tenant ledger provided, and I find that the following occurred:

RENTAL CHARGES AND PAYMENTS				
Date	Amount Due	Amount Paid	Amount o/s	Notes
1-Dec-09	\$ 900.00	\$ 200.00	\$ 700.00	
	\$ 15.00		\$ 715.00	
3-Dec-09		\$ 600.00	\$ 115.00	
14-Dec-09		\$ 100.00	\$ 15.00	
17-Dec-09		\$ 100.00	-\$ 85.00	overpayment
1-Jan-10	\$ 900.00		\$ 815.00	
	\$ 15.00		\$ 830.00	
4-Jan-10		\$ 215.00	\$ 615.00	
4-Jan-10		\$ 200.00	\$ 415.00	
11-Jan-10		\$ 300.00	\$ 115.00	
18-Jan-10		\$ 111.00	\$ 4.00	
29-Jan-10		\$ 260.00	-\$ 256.00	

1-Feb-10	\$	900.00		\$	644.00	
1-Feb-10	\$	15.00		\$	659.00	
1-Feb-10			\$	100.00	\$	559.00
5-Feb-10			\$	300.00	\$	259.00
5-Feb-10			\$	200.00	\$	59.00
1-Mar-10	\$	900.00		\$	959.00	No parking charged
12-Mar-10			\$	200.00	\$	759.00

I find that the tenants owe rent in the amount of \$759.00 for rental arrears up to the month of March, 2010 and \$1,800.00 for the months of April and May, 2010 combined, for a total of \$2,559.00. The landlord has failed to prove that the security deposit was returned to these tenants. The onus is on the landlord to prove such claims and provide sufficient evidence, which I find has not been proven.

### **Conclusion**

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenants must be served with the Order of Possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the landlord has established a claim for \$2,559.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$422.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,186.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 12, 2010.

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Dispute Resolution Officer