

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, 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 by posting on the tenants' door on February 16, 2010. The landlord also sought a Monetary Order for the unpaid rent, late fees, NSF fee 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 served by registered mail sent on March 22, 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, late and NSF fees and filing fee, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on December 1, 2009. Rent is \$859 per month and the landlord holds a security deposit of \$429 paid on November 16, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants' rent cheque for February 2, 2010 was returned NSF.

In the interim, the February rent shortfall remains unpaid and the tenants did not pay rent for March or April 2010.

Therefore, the landlord seeks a an Order of Possession and a Monetary Order for the February rent, plus \$25 NSF fee and \$25 late fee, March rent of \$859 plus \$25 late fee, and April rent for \$859.

## **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 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) the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

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 plus interest in set off against the balance owed, the tenants owe the landlord an amount calculated as follows:

Rent for February 2010 plus previous shortfall.	\$ 859.00
February NSF fee of \$25 and late fee of \$25	50.00
March 2010 rent	859.00
March late fee	25.00
April rent	859.00
Filing fee	50.00
Sub total	\$2,702.00
Less retained security deposit	- 429.00
<b>TOTAL</b>	<b>\$2,273.00</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 tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$2,273.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

May 5, 2010