

## **DECISION**

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

### **Introduction**

This application was brought by the landlords on August 17, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 6, 2010. The landlords also sought a Monetary Order for the unpaid rent.

At the commencement of the hearing, the landlords advised that the tenants had vacated the rental unit at the end of August 2010 and withdrew the request for an Order of Possession.

This matter was dealt with as a Direct Request proceeding on September 1, 2010 but was adjourned to the present participatory hearing due to a need to clarify the terms of the rental agreement. As this is now a participatory hearing, I have amended the landlords' application to include a request for authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding, items not permitted on a Direct Request proceeding.

Despite having been served with the notice of the present participatory hearing, 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 now requires a decision on whether the landlords are entitled to a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

## **Background and Evidence**

This tenancy began on June 4, 2010 under a one-year fixed term agreement. Rent was \$880 per month and the landlords hold a security deposit of \$440 paid on or about June 4, 2010.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of August 6, 2010 had been served when the tenants had not paid the \$880 rent due on August 3, 2010.

The tenants abandoned the rental unit on or about August 31, 2010 without paying the August rent and failing to give notice or provide a forwarding address.

## **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due. 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 make application to dispute the notice and I accept the evidence of the landlord that they did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

I find that, including rent, recovery of the filing fee for this proceeding and authorization to the retain the security deposit in set off, the tenants owe the landlords an amount calculated as follows:

Rent for August 2010	\$880.00
Filing fee	<u>50.00</u>
Sub total	\$930.00
Less retained security deposit (No interest due)	<u>- 440.00</u>
<b>TOTAL</b>	<b>\$490.00</b>

## Conclusion

In addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$490.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

October 13, 2010