

## **DECISION**

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

### **Introduction**

This application was brought by the landlords seeking an Order of Possession pursuant to a one- month Notice to End Tenancy for cause, repeated late payment of rent, served on August 9, 2010. The landlords also sought a Monetary Order for the unpaid rent/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.

Despite having been served with the Notice of Hearing sent by registered mail on August 27, 2010, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### **Issues to be Decided**

This application requires a decision on whether the landlords are entitled to an Order of Possession and a Monetary Order for the unpaid rent and late fees, recovery of the filling fee, and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on February 15, 2010 under a fixed term one-year agreement. Rent is \$1,550 per month and the landlords hold a security deposit of \$775 paid on or about February 15, 2010. The landlords stated that they also hold a \$200 key deposit from the tenant, paid recently when they provided him with the third set of keys after he had misplaced the last set.

During the hearing, the landlords submitted copies of cheques and a record of the tenant's rent payments showing that the tenant's rent had been paid late, by way of NSF cheques in April, May and August, 2010. In June, July and September, the tenant asked the landlords to delay deposit of the cheques to a time some days after the rent due date.

The landlords gave further evidence that \$900 of the rent for September 2010 remained outstanding at the time of the hearing and that he had not paid rent for October 2010.

Therefore, the landlords requested an Order of Possession to take effect two days from service and a Monetary Order for the unpaid rent.

## **Analysis**

I accept the evidence of the landlords that the tenant has been late paying rent in all of the past six months.

Section 47)(a)(b) of the *Act* provides that a landlord may issue an Notice to End Tenancy for repeated late payment of rent.

*Residential Policy Guideline 38* sets three late rent payments as the minimum required to justify a Notice to End Tenancy for repeated late payment of rent. Having found the tenant to be late on six occasions, I find that the landlords are justified in ending the tenancy.

They are, therefore, entitled to the Order of Possession to take effect two days from service of it on the tenant based on the merits of their evidence.

As a matter of note, section 47(5) states that a tenant who receives a Notice to End Tenancy for cause is conclusively presumed to have accepted that the tenancy has ended if the tenant has not made application to contest the notice within 10 days of receiving it. In this matter, the tenant made an application on August 23, 2010, but when he did not pick up the Notice of Hearing materials by September 22, 2010, the application was deemed to have been abandoned.

I further find that the landlords are 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:

Rent arrears to September 2010	\$ 900.00
October rent	1,550.00
Filing fee	50.00
Sub total	\$2,500.00
Less retained security deposit (No interest due)	- 775.00
<b>TOTAL</b>	<b>\$1,725.00</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, the landlord is also issued with a Monetary Order for **\$1,725.00** enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any further damage or loss as may be ascertained at the conclusion of the tenancy including settlement of the key and fob deposit.

October 7, 2010