

## **DECISION**

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

### **Introduction**

This application was brought by the landlords on November 9, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on November 2, 2010.

This matter was originally dealt with as a Direct Request proceeding on November 17, 2010 but was adjourned to the present participatory hearing due to questions of service of the Notice to End Tenancy.

As this is now a participatory hearing, I have exercised the discretion granted under section 64(3)(c) of the Act and amended the landlords' application to include requests for recovery of the filing fee and authorization to retain the security deposit in set off against the balance owed, claims not permitted under direct request proceedings..

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. Therefore, it proceeded in their 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, 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 July 1, 2010. Rent is \$1,400 per month and the landlords hold a security deposit of \$700 paid on June 16, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 2, 2010 had been served when the tenants had a rent shortfall from October of \$50 and had failed to pay rent for November.

The landlord stated that it appears the tenants have abandoned the rental property but he was awaiting the Order of Possession to verify that.

### **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 effective date under the Notice to End Tenancy which was November 12, 2010.

Therefore, I find that the landlords are entitled to an Order of Possession to take effect at 1 p.m. on December 11, 2010.

I further find that, including rent, recovery of the filing fee for this proceeding, the tenants owe the landlords an amount calculated as follows:

Rent shortfall October 2010	\$ 50.00
Rent for November 2010	1,400.00
Filing fee	50.00
Sub total	\$1,500.00
Less retained security deposit (No interest due)	- 700.00
<b>TOTAL</b>	<b>\$ 800.00</b>

## Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 11, 2010.

The landlords' copy of this decision is also accompanied by a Monetary Order for **\$800.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for any further damage or losses as may be ascertained when they have regained possession of the rental unit.

December 9, 2010