

## **DECISION**

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

### **Introduction**

This application was brought by the landlords on February 22, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on January 10, 2011 in person. The landlords also sought 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.

### **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 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 October 1, 2011. Rent is \$1,200 per month and the landlords hold a security deposit of \$600 paid on September 30, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of January 10, 2011 had been served after the tenant had a rent shortfall in every month of the tenancy to the time of her application and again for March 2011.

The landlord reviewed the monthly shortfalls and the tenant did not challenge any of the claims.

The tenant made explanation that she had a roommate who had not been making his share of the payments as he had been incarcerated. However, the tenant conceded that she is the sole signatory to the rental agreement.

## Analysis

Section 26 of the *Act* provides that a tenant 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 tenant did not make application to dispute the notice and I accept the evidence of the landlords that she did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was January 20, 2011.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

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

Rent shortfall for October 2010	\$700.00
Rent shortfall for November 2010	100.00
Rent shortfall for December 2010	100.00
Rent shortfall for January 2011	500.00
Rent shortfall for February 2011	500.00
Rent shortfall for March 2011	500.00
Filing fee	50.00
Sub total	\$2450.00
Less retained security deposit (no interest due)	- 600.00
<b>TOTAL</b>	<b>\$1,850.00</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 two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off , the landlords' copy of this decision is also accompanied by a Monetary Order for **\$1,850.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 7, 2011