

## **DECISION**

**Dispute Codes:**                      **Landlord:** OPR, OPL, MNR, MNSD and FF  
**Tenant:** CNR and FF

### **Introduction**

These applications were brought by both the landlords and the tenant.

By application of March 7, 2011, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on March 3, 2011 and pursuant to a Notice to End Tenancy for landlord use served on February 27, 2011. The landlord also sought a Monetary Order for unpaid rent , recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

By application of March 7, 2011, the tenants seek to have set aside the Notice to End Tenancy of March 3, 2011 for unpaid rent and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

These applications require decisions on whether either or both Notices to End Tenancy should be set aside or upheld with an Order of Possession and if appropriate, the monetary entitlements of either party.

### **Background and Evidence**

This tenancy began on January 15, 2009. Rent is \$2,050 per month and the landlord holds a security and pet damage deposits of \$1,025 each.

During the hearing, the parties gave evidence that the landlord had initially advised the tenants by email that he regrettably had to regain possession of the rent unit for his own

use. They subsequently went through an exchange of emails in which they negotiated various dates for ending the tenancy.

On February 27, 2011, the landlord served the tenants with an official Notice to End Tenancy for landlord use setting an end of tenancy date of April 30, 2011 and that is the notice on which I must rely for the purpose of this decision.

Having begun to seek a mutual agreement to the end the tenancy, the landlord was of the view that the free month's rent provided for in section 51 of the Act was not applicable. The tenant's disagreed and had not paid the rent due on February 15, 2011.

Subsequently, the tenants found new accommodation and gave notice to end the tenancy on March 31, 2011. The tenants concur that they now owe the landlord one-half month's rent of \$1,025.

## **Analysis**

I find that both parties have been in breach of the *Act*. The landlord breached by refusing to acknowledge that the tenants were entitled to the equivalent of one month's free rent as provided for under section 51(1) of the *Act* when notice is give for landlord use. This provision is reiterated on page 2 of the Notice to End Tenancy.

As the rent is payable on the 15<sup>th</sup> of the month, the tenants breached by withholding rent when there was a month and one-half remaining in the tenancy.

As the landlord breached first, I find that the Notice to End Tenancy for unpaid rent is invalid. However, I find that the tenant's now owe the landlord the one-half month's rent and issue a Monetary Order for \$1,025 to the landlord for that purpose.

In addition, the landlord requested and I find he is entitled to an Order of Possession to ensure the tenancy ends on March 31, 2011 as promised by the tenants.

I find that each of the parties should remain responsible for their own filing fees.

## **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 March 31, 2011.

In addition, the landlord's copy of this decision is also accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia in the amount of \$1,025 for service on the tenants.

The disposition of the security and pet damage deposits remains to be determined in accordance with section 38 of the Act at the conclusion of the tenancy.

March 21, 2011