

## **DECISION**

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

### **Introduction**

These applications were brought by both parties.

By application of March 10, 2011, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on March 3, 2011. The landlord also seeks a Monetary Order for the unpaid rent for December 2010, and January, February and March of 2011, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having made a cross application and despite having been served with the landlord's Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing.

Therefore, the tenants' application is dismissed without leave to reapply and the hearing proceeded on the landlord's application in their absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filling fee for this proceeding, and authorization to retain the security deposit in set off against the balance.

### **Background and Evidence**

This tenancy began on June 1, 2009. Rent is \$680 per month and the landlord holds a security deposit of \$300.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had failed to pay rent for the fourth month in a row.

He said he had delayed service of the notice as he had wanted to give the tenants a chance to catch up, but they had been made no effort to do so.

### **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 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 tenants 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 make application to dispute the notice but 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 March 16, 2011 taking into account the three days deemed service of notice served by posting on the tenants' door. .

Thus, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that tenants owe the landlord an amount calculated as follows:

Rent for December 2010	\$680.00
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Rent for January 2011	680.00
Rent for February 2011	680.00
Rent for March 2011	680.00
Filing fee	<u>50.00</u>
Sub total	\$2770.00
Less retained security deposit (no interest due)	<u>- 300.00</u>
<b>TOTAL</b>	<b>\$2,470.00</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 tenants.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,470.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for any damages as may be ascertained at the conclusion of the tenancy.

March 23, 2010