

## **DECISION**

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

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he mailed the Notice of Hearing documents to the Tenants, by registered mail, to the rental unit on March 11, 2011. The Landlord provided a copy of the registered mail receipt in evidence. Documents served in this manner are deemed to be received 5 days after mailing the documents. The Landlord did not serve the Tenants separately and therefore it is not possible to ascertain which Tenant received the registered mail documents. I am satisfied that one of the Tenants was served with the Notice of Hearing. However, neither Tenant signed into the conference and the matter continued in their absence.

### **Issue(s) to be Decided**

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order for unpaid rent?

### **Background and Evidence**

The Landlord's agent gave the following testimony and evidence:

The Landlord's agent testified that he posted the 10 Day Notice to End Tenancy issued

March 2, 2011, on the Tenants' door at the rental unit on March 2, 2011.

The tenancy began on August 1, 2008. A copy of the tenancy agreement was entered in evidence. Monthly rent is currently \$660.00 per month, due on the first day of each month. The Tenant SD paid a security deposit in the amount of \$325.00 on July 24, 2008. The Tenants owe partial rent for the month of February, 2011, in the amount of \$35.00. The Tenants have not paid any rent for March, 2011. The Landlord seeks a monetary order for unpaid rent in the amount of \$685.00 and late fees in the amount of \$25.00.

### **Analysis**

I accept the Landlord's agent's testimony that the Tenants were duly served with the Notice to End Tenancy, pursuant to the provisions of Section 88(g) of the Act. The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Service by posting on a door is deemed to be effected 3 days after posting the Notice. Therefore, the effective end to the tenancy was March 15, 2011. The Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenants.**

When pursuing a monetary claim, the applicant must serve each party with the Notice of Hearing documents. With respect to the Landlord's application for a monetary order, the Landlord has not proved which Tenant was served with the Notice of Hearing documents. Therefore, this portion of the Landlord's application is dismissed with leave to reapply.

The Landlord has been partially successful in its application and is entitled to recover the cost of the filing fee from the Tenants. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct the filing fee of \$50.00 from the security deposit. The

remainder of the security deposit must be administered in accordance with the provisions of the Act.

**Conclusion**

I hereby provide the Landlord an Order of Possession **effective two days from service of the Order upon the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct the cost of the \$50.00 filing fee from the security deposit

The Landlord's application for a Monetary Order is dismissed with leave to reapply,

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2011.

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